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United Nations

Report of the Committee on the Elimination of Racial Discrimination

Eighty-third session
(12–30 August 2013)
Eighty-fourth session
(3–21 February 2014)

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Supplement No. 18 (A/69/18)

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United Nations • New York, 2014

Note

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Letter of transmittal

21 February 2014

Sir,

It is with pleasure that I transmit the annual report of the Committee on the Elimination of Racial Discrimination.

The report contains information from the eighty-third (12 to 30 August 2013) and eighty-fourth (3 to 21 February 2014) sessions.

The International Convention on the Elimination of All Forms of Racial Discrimination, which has now been ratified by 176 States, constitutes the normative basis upon which international efforts to eliminate racial discrimination should be built.

During the eighty-third and eighty-fourth sessions, the Committee continued with a significant workload in terms of the examination of States parties' reports (see chap. III) in addition to other related activities. The Committee also examined the situations of several States parties under its early warning and urgent action procedures (see chap. II). Furthermore, the Committee examined information submitted by several States parties under its follow-up procedure (see chap. IV).

The Committee adopted a general recommendation on combating racist hate speech at its eighty-third session (see annex VIII).

As important as the Committee's contributions have been to date, there is obviously some room for improvement. At present, only 55 States parties have made the optional declaration recognizing the Committee's competence to receive communications under article 14 of the Convention and, as a consequence, the individual communications procedure is underutilized.

Furthermore, only 45 States parties have so far ratified the amendments to article 8 of the Convention adopted at the Fourteenth Meeting of States Parties, despite repeated calls from the General Assembly to do so. These amendments provide, inter alia, for the financing of the Committee from the regular budget of the United Nations. The Committee appeals to States parties that have not yet done so to consider making the declaration under article 14 and ratifying the amendments to article 8 of the Convention.

The Committee remains committed to a continuous process of improvement of its working methods, with the aim of maximizing its effectiveness and adopting innovative approaches to combating contemporary forms of racial discrimination. The evolving practice and interpretation of the Convention by the Committee is reflected in its general recommendations, opinions on individual communications, decisions and concluding observations.

His Excellency Mr. Ban Ki-moon
Secretary-General of the United Nations
New York

At the present time, perhaps more than ever, there is a pressing need for the United Nations human rights bodies to ensure that their activities contribute to the harmonious and equitable coexistence of peoples and nations. In this sense, I wish to assure you once again, on behalf of all the members of the Committee, of our determination to continue working for the promotion of the implementation of the Convention and to support all activities that contribute to combating racism, racial discrimination and xenophobia throughout the world, including through follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 and to the outcome of the Durban Review Conference in 2009.

I have no doubt that the dedication and professionalism of the members of the Committee, as well as the pluralistic and multidisciplinary nature of their contributions, will ensure that the work of the Committee contributes significantly to the implementation of both the Convention and the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in the years ahead.

Please accept, Sir, the assurances of my highest consideration.

(*Signed*) José Francisco **Calí Tzay**
Chairperson
Committee on the Elimination
of Racial Discrimination

I. Organizational and related matters

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination

1. As at 21 February 2014, the closing date of the eighty-fourth session of the Committee on the Elimination of Racial Discrimination, there were 176 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in resolution 2106A (XX) of 21 December 1965 and opened for signature and ratification in New York on 7 March 1966. The Convention entered into force on 4 January 1969 in accordance with the provisions of its article 19.

2. By the closing date of the eighty-fourth session, 55of the 176 parties to the Convention had made the declaration envisaged in article 14, paragraph 1, of the Convention. Article 14 of the Convention entered into force on 3 December 1982, following the deposit with the Secretary-General of the tenth declaration recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals who claim to be victims of a violation by the State party concerned of any of the rights set forth in the Convention. Lists of States parties to the Convention and of those which have made the declaration under article 14 are contained in annex I to the present report, as is a list of the 45 States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties, as at 21 February 2014.

B. Sessions and agendas

3. The Committee on the Elimination of Racial Discrimination holds two regular sessions yearly. The eighty-third (2134th–2263rd meetings) and eighty-fourth (2264th–2293rd meetings) sessions were held at the United Nations Office at Geneva from 12 to 30 August 2013 and 3 to 21 February 2014, respectively.

4. The agendas of the eighty-third and eighty-fourth sessions, as adopted by the Committee, are reproduced in annex II.

C. Membership and attendance

5. At the Twenty-fifth Meeting of States Parties held on 3 June 2013 in New York, States parties elected nine members of the Committee to replace those whose terms of office were due to expire on 19 January 2014, in accordance with article 8, paragraphs 1 to 5, of the Convention. The list of members of the Committee for 2014 is as follows:

Name of member	*Nationality*	*Term expires on 19 January*
Nourredine **Amir**	Algeria	2018
Alexei S. **Avtonomov**	Russian Federation	2016
Marc **Bossuyt**	Belgium	2018
José Francisco **Calí Tzay**	Guatemala	2016
Anastasia **Crickley**	Ireland	2018

Name of member	*Nationality*	*Term expires on 19 January*
Fatimata-Binta Victoire **Dah**	Burkina Faso	2016
Ion **Diaconu**	Romania	2016
Afiwa-Kindéna **Hohoueto**	Togo	2018
Huang Yong'an	China	2016
Patricia Nozipho **January-Bardill**	South Africa	2016
Anwar **Kemal**	Pakistan	2018
Melhem **Khalaf**	Lebanon	2018
Gun **Kut**	Turkey	2018
Dilip **Lahiri**	India	2016
Jose A. **Lindgren Alves**	Brazil	2018
Pastor Elias **Murillo Martínez**	Colombia	2016
Carlos Manuel **Vázquez**	United States of America	2016
Yeung Kam John **Yeung Sik Yuen**	Mauritius	2018

D. Officers of the Committee

6. The Bureau of the Committee comprised the following Committee members in 2014:

Chairperson:	José Francisco Calí Tzay (2014–2016)
Vice-Chairpersons:	Nourredine Amir (2014–2016) Alexei S. Avtonomov (2014–2016) Anastasia Crickley (2012–2016)
Rapporteur:	Dilip Lahiri (2014–2016)

E. Cooperation with the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Educational, Scientific and Cultural Organization, the special procedures of the Human Rights Council and the regional human rights mechanisms

7. In accordance with Committee decision 2 (VI) of 21 August 1972 concerning cooperation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO),[1] both organizations were invited to attend the sessions of the Committee. Consistent with the Committee's recent practice, the Office of the United Nations High Commissioner for Refugees (UNHCR) was also invited to attend.

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[1] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18* (A/87/18), chap. IX, sect. B.

8. Reports of the ILO Committee of Experts on the Application of Conventions and Recommendations submitted to the International Labour Conference were made available to the members of the Committee on the Elimination of Racial Discrimination, in accordance with arrangements for cooperation between the two committees. The Committee took note with appreciation of the reports of the Committee of Experts, in particular of those sections which dealt with the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other information in the reports relevant to its activities.

9. UNHCR submits comments to the members of the Committee on all States parties whose reports are being examined when UNHCR is active in the country concerned. These comments make reference to the human rights of refugees, asylum seekers, returnees (former refugees), stateless persons and other categories of persons of concern to UNHCR.

10. UNHCR and ILO representatives attend the sessions of the Committee and brief Committee members on matters of concern.

F. Other matters

11. Flavia Pansieri, Deputy High Commissioner of the Office of the United Nations High Commissioner for Human Rights (OHCHR), addressed the Committee at its 2234th meeting (eighty-third session), on 12 August 2014.

12. Simon Walker, chief of the Civil, Political, Economic, Social and Cultural Rights Section at the Human Rights Treaties Division of OHCHR, addressed the Committee at its 2264th meeting (eighty-fourth session), on 3 February 2014.

G. Adoption of the report

13. At its 2293rd meeting (eighty-fourth session), on 21 February 2014, the Committee adopted its annual report to the General Assembly.

II. Prevention of racial discrimination, including early warning and urgent action procedures

14. The Committee's work under its early warning and urgent action procedure is aimed at preventing and responding to serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination. A working paper adopted by the Committee in 1993[2] to guide its work in this area was replaced by new guidelines adopted by the Committee at its seventy-first session, in August 2007.[3]

15. The Committee's working group on early warning and urgent action, established at its sixty-fifth session in August 2004, is currently comprised of the following members of the Committee:

Coordinator: Alexei S. Avtonomov

Members:
Anastasia Crickley
Patricia Nozipho January-Bardill
Jose A. Lindgren Alves
Huang Yong'an

16. During the eighty-third and eighty-fourth sessions, the Committee considered a number of situations under its early warning and urgent action procedure, including the following.

17. In its letter dated 30 August 2013, the Committee reiterated its concerns about further alleged failure of **Costa Rica** to protect members and leaders of the Teribe and Bribri peoples against physical violence by illegal occupants of their territories. The Committee urged the State party to adopt a legal framework for the protection of the land, territory and natural resource rights of all indigenous peoples in Costa Rica and to carry out exhaustive investigations into violence against the Teribe and Bribri peoples and bring those responsible to justice. The Committee urged Costa Rica to submit its combined nineteenth to twenty-first periodic reports, overdue since 4 January 2010.

18. On 30 August 2013, the Committee sent a letter to the Government of **India**, noting with appreciation the reply provided by the State party with regard to the situation of the Jarawa people in the Andaman Islands. In the light of new information received, the Committee expressed further concerns about allegations that the construction of Tipaimukh dam had affected the indigenous peoples of northern India and had been conducted without their prior, free and informed consent. In its letter dated 7 March 2014, the Committee expressed concerns about allegations of the failure by the State party to undertake a proper scientific assessment and to request the consent of the indigenous peoples concerned with regard to the construction of Lower Subansiri hydro-electric project allegedly approved by the State party. The Committee requested that the State party urgently submit its twentieth and twenty-first periodic reports, overdue since 2010, and include responses to its concerns expressed.

19. In its letter dated 30 August 2013, the Committee reiterated its concerns about allegations on the alienation of the traditional lands of the Malind and other indigenous peoples of the District of Marueke, in the Papua province, **Indonesia**, by the Marueke

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[2] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18* (A/48/18), para. 18 and annex III.

[3] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 18* (A/62/18), annex III.

Integrated Food and Energy Estate project, which has negatively affected their livelihoods and inflicted irreparable harm on them. The Committee requested that Indonesia provide information on measures taken to involve indigenous people in ongoing legislative processes and measures to register and recognize the collective ownership of customary indigenous territories in the State party.

20. In its letter dated 30 August 2013, the Committee expressed concern about allegations that forced evictions of the Sengwer and Ogiek indigenous peoples from their traditional homeland, in **Kenya**, have been carried out by the Kenya Forest Service by burning houses, possessions and food, and have allegedly affected the livelihood, culture and health of those indigenous peoples. The Committee also expressed concern about allegations that certain provisions of the draft Wildlife Bill and the Conservation Policy were discriminatory, as they failed to adequately take into account the rights of indigenous peoples to their lands, territories and natural resources, and that indigenous peoples have not been adequately consulted on issues related to wildlife conservation and management structures. The Committee requested that Kenya respond to the decisions of the African Commission on Human and Peoples' Rights regarding the forced evictions of Sengwer and Ogiek indigenous peoples and ensure that they receive appropriate redress. In a letter dated 7 March 2014, the Committee expressed concern about further allegations of forced evictions of Sengwer indigenous peoples by the Kenya Forest Service, which were carried out despite an injunction and an order from the Kenyan courts. The Committee particularly requested that the State party consult the Sengwer indigenous peoples and provide compensation for evictions that already took place. The Committee also requested that Kenya include information related to all issues and concerns as outlined above, in its combined fifth to seventh periodic reports due on 13 October 2014.

21. In a letter dated 30 August 2013, the Committee took note of responses provided by **Nepal** to the Committee's letter of 31 August 2012. In particular, it took note that the State party will ensure meaningful and active participation of indigenous peoples in the process of drafting the new constitution. The Committee requested that the State party provide information on measures taken to improve the situation of the Limbuwan indigenous peoples and on the extent of their involvement in the constitution-making process. The Committee also expressed appreciation for the commitment made by the State party to submit its combined seventeenth to nineteenth periodic reports overdue since 1 March 2008.

22. In the light of responses provided by the Government of **Peru** to its previous letter dated 1 March 2013, the Committee further considered the situation of the indigenous peoples living in voluntary isolation in the Kugapakori-Nahua-Nanti Reserve in south-east Peru. In a letter dated 30 August 2013, the Committee took note of explanation by the State party that the expansion of the exploration and exploitation of the Camisea gas project are part of rights previously granted to the Camisea Consortium and, therefore, do not contravene the rights of indigenous peoples living in isolation in the reserve. The Committee, however, expressed concern about the irreparable harm indigenous peoples living in isolation may face as a result of such activities. The Committee requested that the State party take steps to protect the indigenous peoples living in voluntary isolation and provide additional information on the issue during the consideration by the Committee of the State party's periodic reports.

23. The Committee received a reply from the Government of the **United States of America** to the Committee's previous letter dated 1 March 2013 regarding the situation of the Kikapoo Traditional Tribe in Texas, the Yselta del Sur Pueblo (Tigua) and the Lipan Apache (Ndé) indigenous communities, as well as the situation of the San Francisco Peaks and the Western Shoshone. In a letter dated 30 August 2013, the Committee informed the State party that such issues would be discussed in the context of the State party's oral presentation of its periodic reports to the Committee.

24. In its letter dated 7 March 2014, the Committee acknowledged the responses provided by **Guyana** to the Committee's letter of 1 March 2013 regarding allegations on the granting of mining concessions related to lands over which Isseneru and Kako indigenous peoples hold title and on measures taken by Guyana to implement the right of these peoples to provide free, prior and informed consent before any mining concessions are granted. The Committee requested that the State party include further information related to the issues in its combined fifteenth and sixteenth periodic reports, overdue since 17 March 2008.

III. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

25. Belarus

(1) The Committee considered the eighteenth and nineteenth periodic reports of Belarus (CERD/C/BLR/18-19), submitted in one document, at its 2247th and 2248th meetings (CERD/C/SR.2247 and 2248), held on 20 and 21 August 2013. At its 2260th and 2261st meetings (CERD/C/SR.2260 and 2261), held on 29th August 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the combined eighteenth and nineteenth periodic reports of the State party (due in 2008), in line with the Committee's reporting guidelines (CERD/C/2007/1). The Committee also welcomes the submission of the common core document (HRI/CORE/BLR/2011) by the State party.

(3) The Committee commends the State party for its oral presentation and appreciates the open, constructive and focused dialogue with the high-level multisectoral delegation.

B. Positive aspects

(4) The Committee notes the State party's ongoing efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Entry into force on 4 January 2007 of the Counteracting Extremism Act;

(b) Entry into force on 3 July 2009 of the Act on the Granting of Refugee Status and Subsidiary or Temporary Protection to Foreign Nationals and Stateless Persons in Belarus;

(c) Adoption on 4 January 2010 of the Act on the Legal Status of Foreign Nationals and Stateless Persons in Belarus;

(d) Adoption in 2010 of the Law on External Labour Migration;

(e) Amendment on 4 January 2010 of the Freedom of Conscience and Religious Organizations Act;

(f) Entry into force on 12 July 2011 of the International Labour Migration Act of Belarus;

(g) Adoption in January 2012 of the Trafficking in Persons Act.

(5) The Committee welcomes, since the consideration of the fifteenth to seventeenth periodic reports:

(a) The accession of the State party on 25 January 2006 to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(b) The decision of the State party to withdraw its declaration under article 17, paragraph 1, of the Convention.

(6) The Committee also welcomes a number of positive developments, activities as well as administrative measures taken by the State party to fight racial discrimination and promote diversity, including:

(a) Adoption of the National Policy and Action Plan on Trafficking and Illegal Migration 2011–2013;

(b) Establishment of the National Rapporteur on Human Trafficking under the Ministry of the Interior;

(c) International technical assistance project on combating human trafficking in Belarus carried out by the International Organization for Migration (IOM);

(d) Adoption of the Programme for Enhancement of Ethnic Relations 2011–2015;

(e) Adoption of the legal literacy plan 2001–2015.

(7) The Committee takes note with satisfaction of the information received from the Government and other sources on measures to ensure the use, acceptance and teaching of minority languages as well as other initiatives to maintain the "tolerant core" of Belarusian society.

C. Concerns and recommendations

Definition of racial discrimination in national legislation

(8) The Committee is concerned at the absence of a definition of racial discrimination in accordance with article 1 of the Convention in national legislation (art. 1).

Recalling its general recommendation 14 (1993) on article 1, paragraph 1, of the Convention, the Committee recommends that the State party consider enacting specific legislation containing a definition of racial discrimination according to the Convention.

Comprehensive legislation on racial discrimination

(9) The Committee is concerned at the absence of comprehensive legislation specifically prohibiting incitement of racial discrimination, in conformity with article 4 of the Convention, including the criminalization of racist organizations. It is also concerned at the lack of legislation to combat hate speech, making racist motivation for acts of violence an aggravating circumstance in the determination of sanctions (arts. 1 and 4).

The Committee recalls its general recommendation 15 (1993) on article 4 of the Convention, and recommends that the State party adopt comprehensive legislation specifically prohibiting racial discrimination in its direct and indirect forms and criminalizing racist organizations, racist hate speech and incitement to racial violence, in accordance with the full scope of article 4 of the Convention, and making racist hate speech an aggravating circumstance in the determination of sanctions for crimes of violence.

Implementation of the Counteracting Extremism Act

(10) The Committee is concerned that the Counteracting Extremism Act could be interpreted and enforced in an excessively broad manner (art. 4).

The Committee recommends that the State party ensure strict adherence to the principles and provisions of the Convention in the interpretation and application of the Counteracting Extremism Act, and in its enforcement, so that it does not target or disadvantage human rights defenders promoting the elimination of racial discrimination. It also requests information on such specific examples of circumstances when the Act is enforced and on how it is used to protect human rights under the Convention.

Indirect discrimination under the Labour Code

(11) The Committee notes the absence of information concerning the amendment of section 14 of the Labour Code to provide more explicit prohibition of indirect discrimination. It also notes the lack of information on cases of disputes based on direct or

indirect discrimination in relation to ethnic and religious minorities and foreigners under the Labour Code (arts. 2, 4 and 6).

The Committee requests the State party to provide specific information on disputes concerning direct or indirect discrimination under the Labour Code and recommends that section 14 of the Labour Code be amended with a view to more explicitly prohibiting indirect discrimination.

Court cases on racial discrimination

(12) While taking note of the information provided by the State party regarding the number of convictions under the Criminal Code for offences committed on racial grounds, the Committee remarks the absence of descriptive information about the nature of cases relating to the enforcement of rights enshrined in the Convention. It is also concerned that discrimination is not accepted as a basis for initiating judicial proceedings. The Committee regrets the absence of information on specific cases illustrating the direct application of the Convention by judicial and administrative bodies, given that international treaties and agreements to which Belarus is a party can be directly invoked in courts (arts. 2, 5 and 6).

Recalling its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee requests the State party:

(a) To provide comprehensive information on the number and type of offences prosecuted on racial grounds, as well as on convictions, sentences and redress provided to victims;

(b) To provide information on the enforcement of rights enshrined in the Convention, including any cases where discrimination has been taken as the basis for initiating judicial proceedings;

(c) To provide information on the number and type of cases in which judges have directly invoked the Convention;

(d) To provide information on any complaint mechanisms available to victims of racial discrimination, the number of complaints and access to legal aid.

Compensation for acts of racial discrimination

(13) While noting that the Constitution provides for compensation for property damage and financial redress for moral injury, the Committee is concerned at the absence of a specific provision authorizing compensation for racial discrimination. It is also concerned that there are no recorded cases in which compensation has been sought for material or moral damage in connection with acts of discrimination.

The Committee recommends that the State party introduce provisions in its legislation which provide specifically for compensation in connection with acts of discrimination and ensure just and adequate reparation for moral injuries and damages to property incurred as a result of racial discrimination.

Independence of judges and lawyers

(14) Taking into consideration that all individuals must enjoy effective protection and remedies through the competent national courts and other State institutions against any acts of racial discrimination and that the independence of the judiciary and the ability of lawyers to discharge their professional functions freely is essential, including in cases relating to racial discrimination, the Committee is concerned at allegations that such conditions are not always present in the State party (arts. 5 and 6).

Recalling its general recommendation 20 (1996) on article 5 of the Convention and its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party consider taking the necessary measures in order to guarantee the full independence and impartiality of the judiciary in line with the United Nations Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 and 40/146 and ensure that it is in a position to protect victims of racial discrimination. It also recommends that the State party ensure that lawyers are able to exercise their functions effectively.

Establishment of a national human rights institution

(15) While the Committee takes note that the State party accepted the recommendation to establish a national human rights institution in the context of the universal periodic review and that its establishment is currently under consideration, it is concerned at the absence of progress in this regard (art. 2).

In light of its general recommendation 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party expedite efforts to establish a single fully independent human rights institution with a broad mandate for the promotion and protection of human rights, including receiving and processing complaints from individuals, in line with the Principles relating to the status of national institutions (The Paris Principles) (General Assembly in resolution 48/134, annex).

Situation of Roma

(16) While noting the steps taken by the State party to improve the situation of the Roma community, in particular in the field of education, the Committee is concerned that the general level of education, in particular secondary and higher, of members of the Roma community is insufficient and that they are employed almost exclusively in the private sector. It is also concerned at possible negative stereotyping of members of the Roma community in the media, and reports of police violence against the Roma for not having identity documents (arts. 2 and 5).

In light of its general recommendation 27 (2000) on discrimination against Roma, the Committee requests the State party to provide further information on measures taken to ensure that members of the Roma community are not discriminated against and that they have equal access to education at all levels, employment, including in the State sector, housing, identity documents, access to public places, social and other services, and that there is no negative stereotyping of Roma in the media. The Committee encourages the State party to continue the positive practice of working with Roma parents in order to encourage them to send their children to school as at the age of six. It invites the State party to consider taking special measures to improve the situation of the Roma community in accordance with article 2, paragraph 2, of the Convention.

Combating human trafficking

(17) While commending the efforts of the State party to combat trafficking in persons, including through the adoption of legislation, and the significant results achieved so far, the Committee is concerned that Belarus continues to be a source and transit country for human trafficking, both for purposes of sexual exploitation and forced labour (arts. 5, 6 and 7).

The Committee recommends that the State party:

(a) Continue and enhance its efforts to combat human trafficking and take preventive measures to address its root causes, including the link to prostitution and sexual exploitation, in particular of women belonging to ethnic minorities;

(b) Provide assistance, protection, temporary residence permits, rehabilitation and shelter as well as medical, psychological and other services and assistance to victims of trafficking, and ensure that they are not prosecuted;

(c) Promptly and thoroughly investigate, prosecute and punish those responsible;

(d) Consider concluding bilateral agreements with other countries in order to strengthen prevention of and combat trafficking;

(e) Provide training to law enforcement officials, including police officers, border guards and immigration officials, in the identification of, assistance to and protection of victims of trafficking;

(f) Conduct public awareness-raising campaigns on human trafficking.

Human rights training

(18) While noting the training and retraining courses in human rights issues provided to judicial and law enforcement officials, in particular the courses organized by the International Training Centre on Migration and Human Trafficking, the Committee remarks the lack of mechanisms to evaluate the effectiveness of the training and the absence of information on the number and level of persons trained (arts. 2, 4 and 7).

Recalling its general recommendation 13 (1993) on training of law enforcement officials in protection of human rights, the Committee recommends that, in addition to general human rights training, law enforcement and judicial officials receive training specifically on the provisions of the Convention, and that mechanisms be established to evaluate the effectiveness of such training.

D. Other recommendations

Ratification of other treaties

(19) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights as well as the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Follow-up to the Durban Declaration and Programme of Action

(20) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and take into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The

Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Consultation with organizations of civil society

(21) The Committee recommends that the State party consult and expand its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the implementation of the present concluding observations and the preparation of the next periodic report.

Amendment to article 8 of the Convention

(22) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Declaration under article 14 of the Convention

(23) The Committee recommends that the State party consider making a declaration in accordance with article 14 of the Convention, recognizing the competence of the Committee to receive and consider individual complaints.

Dissemination

(24) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official languages as well as in other commonly used languages, as appropriate.

Follow-up to concluding observations

(25) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 10, 15 and 17 above.

Paragraphs of particular importance

(26) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 9, 11 and 16 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(27) The Committee recommends that the State party submit its twentieth to twenty-third periodic reports in a single document by 8 May 2016, taking into account the guidelines for the treaty-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports as per the harmonized guidelines on reporting (HRI/GEN.2/Rev.6, chap. I, para. 19).

26. Belgium

(1) The Committee on the Elimination of Racial Discrimination considered the sixteenth to nineteenth periodic reports of Belgium, submitted in a single document (CERD/C/BEL/16-19), at its 2271st and 2272nd meetings, held on 6 and 7 February 2014 (see CERD/C/SR.2271 and 2272). At its 2289th and 2290th meetings, held on 19 and 20 February 2014 (see CERD/C/SR.2289 and 2290), the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the timely submission of the sixteenth to nineteenth periodic reports of the State party, in a single document. The Committee is satisfied with the open and constructive dialogue it has had with the delegation of the State party. The Committee notes with satisfaction the oral presentation and the detailed responses provided by the delegation during the consideration of the report.

B. Positive aspects

(3) The Committee commends the State party on the following legislative, policy and institutional developments since the submission of the State party's previous periodic report:

(a) Royal Order of 22 December 2009 amending article 17 of the Royal Order of 9 June 2009 implementing the Act of 30 April 1999 on the employment of foreign workers, which allows access to the labour market for asylum seekers whose application has received no response for six months;

(b) Act of 12 September 2011 amending the Act of 15 December 1980 on the award of temporary residence permits to unaccompanied foreign minors;

(c) Act of 14 January 2013, which increases the penalties for certain offences in the case of aggravated circumstances based on discriminatory motives, including racial motives;

(d) National Roma Integration Strategy, adopted in March 2012;

(e) National Action Plan 2012–2014 to Combat Trafficking in and Smuggling of Human Beings;

(f) Founding of the "Kazerne Dossin" Memorial, Museum and Documentation Centre on the Holocaust and Human Rights, on 1 December 2012.

(4) The Committee expresses its satisfaction with the work of the Centre for Equal Opportunities and Action to Combat Racism, including its work on socio-economic monitoring and its Diversity Barometer.

(5) The Committee welcomes the ratification by the State party of the following international human rights instruments:

(a) Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 2 July 2009;

(b) International Convention for the Protection of All Persons from Enforced Disappearance, on 2 June 2011.

C. Concerns and recommendations

National plan of action against racism

(6) The Committee is concerned that the State party has not yet adopted a national action plan against racism as provided for by the Durban Declaration and Programme of

Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (art. 2).

The Committee recommends that the State party accelerate the process of adoption of a national action plan against racism.

Establishment of a national human rights institution

(7) The Committee notes with satisfaction that the Centre for Equal Opportunities and Action to Combat Racism has become interfederal, with competence to monitor discrimination at the regional and local levels as well as the federal level. However, the Committee is concerned that the State party has not yet established a national human rights institution in full compliance with the Paris Principles. The Committee is also concerned that the competence of the Centre for Equal Opportunities and Action to Combat Racism in matters relating to migration and non-nationals has been transferred to the newly created Federal Centre for the Analysis of Migratory Flows, the Protection of the Fundamental Rights of Foreigners, and Action against Human Trafficking, which has authority only at the federal level. The Committee is further concerned that the board of the new Centre will be appointed by the Executive, which may compromise its independence (art. 2).

The Committee recommends that the State party accelerate the process for the establishment of a national human rights institution in full compliance with the Paris Principles. The Committee also recommends that the State party provide the newly created Federal Centre for the Analysis of Migratory Flows, the Protection of the Fundamental Rights of Foreigners, and Action against Human Trafficking (Centre on Migration) with the human and financial resources it requires to carry out its mandate effectively. The Committee further recommends that the State party ensure that the new Centre cooperates closely with the Interfederal Centre for Equal Opportunities and Action to Combat Racism on matters relating to discrimination against migrants.

Special measures

(8) The Committee notes that, while the Act of 10 May 2007 authorizes the use of special measures, the Act provides for the issuance of a royal order specifying the circumstances in which such measures may be used. The Committee is concerned that, almost seven years later, such a royal order has not been issued (art. 2).

Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party, as a matter of priority, issue the royal order provided for in the Act of 10 May 2007 to enable public and private entities to adopt policies regarding special measures.

Prohibition of organizations which promote racial discrimination

(9) While taking note of the State party's approach of penalizing individuals belonging to organizations which promote and incite racial discrimination, the Committee remains concerned that the State party has not adopted legislation declaring organizations which promote and incite racial discrimination illegal, in conformity with article 4 (b) of the Convention (art. 4).

Recalling its general recommendations No. 1 (1972) on States parties' obligations, No. 7 (1985) on legislation to eradicate racial discrimination, No. 15 (1993) on organized violence based on ethnic origin and No. 35 (2013) on combating racist hate speech, which state that the provisions of article 4 of the Convention are of a preventive and mandatory nature, the Committee reiterates its previous recommendation that the State party adopt specific legislation to implement all aspects of article 4 of the

Convention, including the provisions that organizations which promote and incite racial discrimination shall be declared illegal and prohibited.

Anti-Semitism and Islamophobia

(10) In view of the intersectionality of religion and ethnicity in the State party, and while noting the numerous measures the State party has implemented to counter anti-Semitism and Islamophobia, including awareness campaigns, the creation of a watchdog unit on anti-Semitism and campaigns against cyber hate, the Committee remains concerned at the number of acts of Islamophobia and anti-Semitism that have occurred in the State party (art. 2).

The Committee recommends that the State party:

(a) Increase its vigilance and reinforce measures to combat anti-Semitism and Islamophobia;

(b) Reinforce its awareness-raising campaigns on anti-Semitism and Islamophobia and promote tolerance among the various ethnic groups of its population;

(c) Promptly investigate, prosecute and punish, with appropriate penalties, the perpetrators and provide adequate protection to victims;

(d) Investigate the underlying causes of the anti-Semitism and Islamophobia in its society and inform the Committee on the results.

The Committee also recommends that the State party provide information in its next periodic report on the outcomes of cases relating to acts of Islamophobia and anti-Semitism before its domestic courts and tribunals.

(11) While noting the explanations of the delegation of the State party, the Committee is concerned that the decision of the autonomous board of Flemish Community Education to prohibit the wearing of symbols of belief in all schools under its authority, as well as the decision of the French Community to leave that decision to each school, may constitute a basis for discrimination against members of some ethnic groups (arts. 2 and 7).

The Committee recommends that the State party ensure that any policies regarding the wearing of symbols of belief in schools and in employment do not in practice lead to discrimination on the basis of ethnicity or national origin, or cause de facto segregation. The Committee recommends that the State party promote dialogue and tolerance on this subject.

Police and racially motivated acts and violence

(12) While welcoming the issuance of Circular No. 13/2013 of 17 June 2013 and the training programmes the State party has put in place for the police and judges, the Committee is concerned at reports that racially motivated violence and ill-treatment by police officers of persons with an immigrant background remains a problem. The Committee is also concerned at the very low number of complaints lodged to date and investigated by the Standing Police Monitoring Committee. It is further concerned at the low number of cases of racially motivated acts and violence committed by police officers that have been addressed by the State party's courts (arts. 2 and 6).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take all the necessary measures to combat racially motivated violence by police officers firmly and effectively. The Committee also recommends that the State party:

(a) Ensure that all victims of racially motivated violence, including undocumented migrants, can lodge complaints effectively without fear of reprisals;

(b) Ensure that all allegations of racially motivated acts are thoroughly, promptly and impartially investigated, and perpetrators prosecuted and sanctioned as appropriate, including by disciplinary measures;

(c) Reinforce the independence and effectiveness of the mechanism for lodging complaints against police officers;

(d) Enhance, including by allocating sufficient time for, human rights training programmes for police officers, in particular on the provisions of the Convention, and evaluate the effectiveness of training programmes;

(e) Provide the Committee with information on the outcome of cases of racially motivated acts before courts, including disciplinary proceedings.

(13) While noting the explanations and additional documentation provided by the delegation of the State party, the Committee remains concerned at reports that violence by police officers during the deportation of foreigners persists. The Committee is further concerned that the small number of checks carried out by the General Inspectorate of the Federal and Local Police and the lack of adequate resources allocated to that body may hamper its effectiveness in executing its mandate to control and monitor deportations. The Committee is also concerned at reports that victims of such violence face difficulties in lodging complaints (arts. 2 and 6).

The Committee recommends that the State party step up its monitoring of deportations of foreign nationals, increase the number of controls over deportations and ensure that the General Inspectorate of the Federal and Local Police has adequate resources to execute its mandate effectively. The Committee also recommends that the State party consider permitting the monitoring of deportations by non-governmental organizations or adopt alternative measures to enhance monitoring, such as video recording. The Committee further recommends that the State party facilitate the lodging of complaints about racially motivated violence during deportations, investigate such complaints, sanction those responsible with appropriate penalties and provide appropriate remedies and assistance to the victims.

Persons of foreign origin in the criminal justice system

(14) While noting the State party's acknowledgment of the lack of reliable data on the subject, the Committee remains concerned at reports that persons of foreign origin are overrepresented in the criminal justice system, including with respect to rate and length of incarceration.

In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party investigate the extent to which persons of foreign origin are overrepresented in the criminal justice system and take appropriate steps to address any problem found in this regard.

Structural discrimination against non-citizens in relation to economic, social and cultural rights

(15) The Committee is concerned that, despite numerous measures taken by the State party at the federal, regional and community levels, migrants and persons of foreign origin continue to face obstacles to the full enjoyment of economic, social and cultural rights. In particular, the Committee is concerned at reports that persons of foreign origin, especially those from non-European Union countries, face structural discrimination in the field of

employment, where "ethnic stratification" seems to exist. The Committee is further concerned at difficulties faced by such persons in accessing housing (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens and No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party strengthen existing measures at the federal, regional and community levels, to improve the integration of persons of foreign origin in the labour market and address the structural discrimination they face. The Committee also recommends that the State party step up its efforts to encourage recruitment of persons of foreign origin to jobs in the public and private sectors, implementing special measures as appropriate. The Committee further recommends that the State party investigate effectively cases of racial discrimination in employment and provide victims with adequate remedies.

The Committee recommends that the State party pursue and reinforce measures taken at federal, regional, and community levels to facilitate access to adequate housing for persons of foreign origin and firmly combat racial discrimination in access to housing.

(16) The Committee is concerned at reports that access to urgent medical care is restricted for irregular migrants. It is also concerned at reports that, in some public social assistance centres in Antwerp, Ghent and Brussels, urgent medical care for irregular migrants has been conditional on their agreement to voluntarily return to their countries of origin. The Committee is further concerned at the Act of 19 January 2012, which added article 57 quinquies to the Organic Law of 8 July 1976 on public social assistance centres and which provides that nationals of European Union member States shall not qualify for social assistance for three months after their arrival in Belgium (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party take appropriate measures at the federal, regional and community levels to ensure that irregular migrants have access to health-care services without discrimination on the basis of their national origin. The Committee also recommends that the State party consider amending the Act of 19 January 2012 to provide newly arrived migrants from European Union countries with social services without discrimination on the basis of their national origin.

(17) While noting the explanations provided by the delegation of the State party, the Committee is concerned that the Act of 4 December 2012 amending the Nationality Code makes it more difficult to acquire Belgian nationality. The Committee is also concerned that such amendments, particularly the new criteria relating to economic integration, create additional obstacles to the integration of migrants into Belgian society, especially for those who face difficulties in obtaining paid employment. The Committee is further concerned that the Act of 8 July 2011 amending the Act of 15 December 1980 on the entry, residence, settlement and expulsion of foreign nationals with respect to the conditions for family reunification, imposes more restrictive conditions on family reunification for Belgian nationals than for citizens of other European Union member States, thereby disadvantaging recently naturalized Belgians of non-European Union origin (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party consider amending its legislation regarding the acquisition of Belgian nationality to facilitate the integration of migrants into its society. In particular, the Committee recommends that the State party make the criteria for economic integration more flexible. The Committee recommends that the State party ensure that its legislation regarding family

reunification for persons who have been naturalized does not discriminate on the basis of national origin or ethnicity. The Committee further recommends that the State party ratify the 1961 Convention on the Reduction of Statelessness.

Discrimination against Roma and Travellers

(18) While noting the inclusive policies of the State party at various levels regarding education, employment, health care and culture, the Committee is concerned at the persistent social exclusion and direct and indirect discrimination faced by Roma regarding the enjoyment of economic, social and cultural rights. In particular, the Committee is concerned at discrimination against Roma with regard to access to housing due, inter alia, to their intermittent residence in the territory of the State party (art. 5).

Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party implement effectively measures at the federal, regional and community levels to promote the integration of Roma, and firmly combat direct and indirect discrimination against Roma in the fields of employment, education and health. The Committee also recommends that the State party regularly review its policies on Roma in consultation with them and give priority to sustainable solutions regarding their residence status. The Committee urges the State party to speed up the implementation of its National Roma Integration Strategy.

(19) The Committee is concerned that the State party has not yet arrived at sustainable solutions to the housing situation of Travellers, who continue to lack sites and are at risk of being expelled by local authorities. In particular, the Committee is concerned that caravans are not recognized as valid housing in the Walloon region and that, in the Flemish and Brussels regions, housing quality standards do not cover caravans or the sites where they are parked. The Committee is further concerned at reports that Travellers face difficulties in being registered as residents of municipalities, which prevents them from having valid identification papers and fully enjoying their rights, in particular, access to welfare services (art. 5).

The Committee recommends that the State party take specific action at various levels to address the housing situation of Travellers, including by recognizing caravans as valid housing, providing appropriate sites for caravans and adopting suitable housing quality standards. The Committee also recommends that the State party facilitate the registration of Travellers by municipalities.

Treatment of asylum seekers

(20) While noting the explanations provided by the delegation about the treatment of asylum seekers under Regulation (EU) No 604/3013 of the European Parliament and of the Council of 26 June 2013 (Dublin III), the Committee is concerned at reports that asylum seekers continue to be systematically detained at borders (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party ensure that non-custodial measures are used whenever possible and that detention of asylum seekers at borders is used as a measure of last resort. The Committee also recommends that the State party ensure that the enactment of Dublin III at the domestic level and its interpretation by the authorities are in compliance with international standards and the Convention.

Trafficking in persons

(21) The Committee is concerned at the persistence in the State party of trafficking in persons, particularly women and girls for economic and sexual exploitation. The

Committee regrets that the State party has not provided specific statistical data on this matter. It is also concerned at reports that the provision of assistance to victims of trafficking may be subject to restrictive conditions (art. 5).

The Committee recommends that the State party pursue its efforts to combat trafficking in persons, including by implementing effectively its National Action Plan to Combat Trafficking and Smuggling in Human Beings. The Committee recommends that the State party step up investigations into trafficking, prosecute those responsible and impose appropriate penalties. The Committee also recommends that the State party increase assistance to victims and afford them adequate remedies. The Committee further recommends that the State party consider revising its law to facilitate the provision of assistance to victims. The Committee recommends that the State party provide the Committee with statistical data, disaggregated by national and ethnic origin, on this issue in its next report.

Cultures and language of migrants

(22) The Committee is concerned about the lack of information on efforts by the State party to facilitate the preservation of the cultures and languages of migrants (art. 7).

The Committee encourages the State party to adopt measures aimed at promoting and facilitating the preservation and development of the cultures and languages of migrant groups established in its territory.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

(23) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dialogue with civil society

(24) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, in connection with the preparation of its next periodic report.

Amendment to article 8 of the Convention

(25) The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Follow-up to concluding observations

(26) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information,

within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 8, 19 and 20 above.

Recommendations of particular importance

(27) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 10, 12 and 15 above and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination

(28) The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

(29) The Committee recommends that the State party submit its twentieth to twenty-second periodic reports in a single document by 6 September 2018, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (see the harmonized reporting guidelines in document HRI/GEN/2/Rev.6, chap. I, para. 19).

27. Burkina Faso

(1) The Committee on the Elimination of Racial Discrimination considered the twelfth to nineteenth periodic reports of Burkina Faso, submitted in a single document (CERD/C/BFA/12-19), at its 2245th and 2246th meetings (CERD/C/SR.2245 and 2246), held on 19 and 20 August 2013. At its 2259th meeting (CERD/C/SR.2259), held on 28 August 2013, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission, in a single document, of the twelfth to nineteenth periodic reports of the State party, and the opportunity this provided for a renewed dialogue with the State party. It regrets, however, that the State party submitted its reports very late and encourages it to meet the deadlines for submitting its future reports.

(3) The Committee was satisfied with the frank and constructive dialogue it held with the high-level multisectoral delegation sent by the State party. The Committee takes note with satisfaction of the oral presentation and detailed replies given by the delegation during the consideration of the report.

B. Positive aspects

(4) The Committee notes with interest the legislative and institutional progress made by the State party since its last periodic report, which should contribute to combating racial discrimination, particularly:

(a) The adoption of Act No. 042-2008/AN of 23 October 2008, the Refugees Act;

(b) The adoption of Act No. 029-2008/AN of 15 May 2008 on combating human trafficking and related practices;

(c) The adoption of Act No. 062-2009/AN of 21 December 2009 establishing the National Human Rights Commission;

(d) The adoption of Act No. 028-2008/AN of 13 May 2008, the Labour Code, which prohibits all forms of racial discrimination in the areas of employment and occupation;

(e) The establishment in 2012 of the Ministry for Human Rights and the Promotion of Civic Responsibility;

(f) The establishment in 2011 of the National Council of Civil Society Organizations;

(g) The adoption of the National Policy on Human Rights and the Promotion of Civic Responsibility 2013–2022.

(5) The Committee notes with interest that since it last considered a periodic report from the State party, the latter has ratified the following international instruments:

(a) The International Covenant on Economic, Social and Cultural Rights;

(b) The International Covenant on Civil and Political Rights;

(c) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(e) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;

(f) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(g) The Convention on the Rights of Persons with Disabilities;

(h) The International Convention for the Protection of All Persons from Enforced Disappearance;

(i) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

C. Concerns and recommendations

Definition of racial discrimination

(6) The Committee notes that the State party's Criminal Code and Labour Code contain some elements of the definition of racial discrimination. Nevertheless, the Committee is concerned about the fact that the State party's legislation has no specific definition of racial discrimination that is fully in line with article 1 of the Convention (art. 1).

The Committee recommends that the State party include in its legislation a definition of racial discrimination that is in line with article 1 of the Convention.

Definition of racial discrimination as an offence

(7) The Committee is concerned that, although some provisions of the State party's legislation define certain acts related to racial discrimination as criminal offences (for example, article 132 of the Criminal Code, article 47 of Act No. 10/92/ADP on freedom of association, and article 112, paragraph 2, of the Information Code), these provisions do not cover all the elements set out in article 4 of the Convention and therefore do not comply with the latter (art. 4).

The Committee recalls its general recommendations Nos. 1 (1972) on States parties' obligations, 7 (1985) on the application of article 4 of the Convention and 15 (1993) on

article 4 of the Convention, which state that the provisions of article 4 are of a mandatory and preventive nature, and recommends that the State party amend its current legislation, and the Criminal Code in particular, to include provisions that give full effect to all the elements set out in article 4 of the Convention.

Discrimination based on descent

(8) While taking note of the information provided by the State party, the Committee is concerned at the survival of the caste system in certain ethnic groups, which leads to discrimination against certain categories of people and impedes their full enjoyment of the rights enshrined in the Convention (arts. 3 and 5).

The Committee, recalling its general recommendation No. 29 (2002) on discrimination based on descent, recommends that the State party:

(a) Take specific measures to combat and eradicate all caste practices, including through the effective implementation of the current legislation on racial discrimination;

(b) Consider adopting special legislation on discrimination based on descent;

(c) Strengthen and continue with public awareness and education campaigns, particularly among the ethnic and other groups concerned and among traditional and religious leaders, on the harmful effects of the caste system and the situation of victims;

(d) Include this issue in the appropriate programmes, policies and strategies adopted by the State party;

(e) Provide the Committee with detailed additional information on the impact of the measures taken to abolish this system.

Customary practices that are harmful to women

(9) The Committee takes note of the measures taken by the State party, including those set out in the Criminal Code and the Personal and Family Code, to combat harmful customary practices. Nevertheless, the Committee is concerned that harmful customary practices, such as forced marriages, female genital mutilation, levirate and sororate, persist in certain ethnic groups and impede women's full enjoyment of the rights enshrined in the Convention. The Committee is also concerned about the social exclusion of women accused of witchcraft (arts. 2 and 5).

The Committee, recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, recommends that the State party take urgent measures to put a stop to harmful customary practices that impede women's full enjoyment of their rights in certain ethnic groups. It also recommends that the State party intensify its campaigns to raise awareness among the general public, and among traditional and religious leaders in particular, and that it make women aware of their rights by disseminating the relevant legislation. Lastly, the Committee recommends that the State party expedite the inclusion in the Criminal Code of a provision to protect women accused of witchcraft. It further recommends that the State party give this issue priority in its national policy on human rights and the promotion of civic responsibility, its national strategy for girls' education for 2012–2021 and its national gender policy for 2009–2017.

Refugees and asylum seekers

(10) The Committee takes note of the major effort made by the State party to take in a very large number of Malian refugees in its territory and its initiatives to promote tolerance between refugees and local communities. However, the Committee is concerned at reports

that most child refugees have no birth certificate, even though the State party's legislation provides for a late registration procedure that allows every child whose birth is not declared within 60 days to be registered and receive a birth certificate. The Committee notes with concern that, despite the adoption of the Refugees Act in 2008 and its implementing decrees in 2011, the appeal body provided for therein has not yet been set up, thereby impeding the full implementation of the Act. Lastly, the Committee is concerned at reports that refugees encounter obstacles in their efforts to access the labour market, as potential employers are not familiar with the identity cards issued to refugees (art. 5).

The Committee, recalling its general recommendations Nos. 22 (1996) on article 5 and refugees and displaced persons and 30 (2004) on discrimination against non-citizens, recommends that the State party take measures to ensure that child refugees are registered free of charge and issued with birth certificates. To this end, the Committee recommends that the State party improve refugees' access to registry offices and continue to conduct awareness campaigns for parents in camps, to inform them of their right to register their children. It also recommends that the State party ensure, as a matter of urgency, that the appeal body established under the Refugees Act becomes operational so that pending asylum applications can be considered. Lastly, the Committee recommends that the State party facilitate refugees' access to the labour market with the implementation of the 2008 Refugees Act and raise employers' awareness of this issue.

Garibou children

(11) The Committee notes with interest the attention paid by the State party to the problem of the exploitation of *garibou* children, who come from neighbouring countries or are from certain ethnic groups, and the measures taken for their protection and education. However, the Committee is concerned about the fact that this phenomenon persists despite the ban on all forms of begging set out in articles 242 to 245 of the Criminal Code. It is worried that such children may be at risk of being trafficked, exploited or abused in some way (art. 5).

The Committee recommends that the State party take new measures or strengthen existing ones to protect *garibou* children from neighbouring countries or from certain ethnic groups from exploitation, abuse and trafficking. To this end, it recommends that the State party strictly enforce the legislation relating to begging and Act No. 029-2008/AN of 15 May 2008 on combating human trafficking and related practices and that it prosecute and punish the marabouts responsible. It also recommends that the State party step up its efforts to raise awareness among parents and the people in charge of Koranic schools.

Enjoyment of economic, social and cultural rights by different ethnic groups

(12) The Committee takes note of the information supplied by the State party on the enjoyment of economic, social and cultural rights by the people living in its territory. However, the Committee is concerned that certain groups, including nomads, migrants and people living in rural areas, may not be sufficiently taken into account in the development programmes and policies drawn up by the State party (art. 5).

The Committee recommends that the State party take the necessary measures to avoid the marginalization of certain ethnic groups or certain regions and to ensure that they are included when implementing its development programmes and policies, particularly those related to basic public services.

Legal action over racial discrimination

(13) The Committee is concerned about the fact that the State party's report gives no information on complaints or court judgements related to racial discrimination. It is also

concerned about the lack of information from the National Human Rights Commission and the Ombudsman on cases of racial discrimination in Burkina Faso. Moreover, the Committee regrets that neither the Ministry for Human Rights and the Promotion of Civic Responsibility nor its outreach and counselling centres have received any complaints about cases of racial discrimination (art. 6).

The Committee, referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, reminds the State party that the absence of complaints or legal action by victims of racial discrimination may reveal a lack of relevant legislation, insufficient awareness of existing legal remedies, a reluctance on the part of the authorities to prosecute those who commit such acts, a lack of confidence in the criminal justice system or victims' fear of reprisals. The Committee requests the State party to ensure that its legislation contains appropriate provisions and that the general public, including people living in refugee camps, nomadic or semi-nomadic groups and people living in rural areas, know their rights and are aware of all the legal remedies available to them in cases of racial discrimination.

National human rights institution

(14) The Committee notes that the members of the National Human Rights Commission were named on 27 March 2013. However, it is concerned that the Commission still does not have resources of its own sufficient to ensure its operation (art. 2).

The Committee recommends that the State party finalize the measures designed to give the National Human Rights Commission resources of its own sufficient for its operation, in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles). It also recommends that the State party work to ensure that the National Human Rights Commission is reaccredited with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Conflicts between herders and farmers

(15) The Committee takes note of the explanations provided by the State party on the conflicts between herders and farmers, as well as the initiatives taken to resolve these conflicts. However, the Committee is concerned by the communitarian and sometimes ethnic dimension of these conflicts, especially those involving the Fulani people, and by the human rights violations they entail (arts. 2, 5 and 7).

The Committee recommends that the State party implement and build on the initiatives it has taken to resolve and put an end to the conflicts between herders and farmers and to prevent them from turning into ethnic conflicts, including through the preventive and mediation activities of the Ministry for Human Rights and the Promotion of Civic Responsibility, the conflict prevention and resolution mechanism and the system for monitoring conflicts between herders and farmers and that the State party continue its efforts to raise awareness among the communities or ethnic groups concerned. The Committee also recommends that the State party investigate the human rights violations committed in the course of these conflicts and that it prosecute and punish the perpetrators and compensate the victims.

Training and awareness-raising in the area of human rights and the Convention

(16) The Committee takes note of the human rights training and awareness-raising activities organized by the State party. The Committee regrets that the State party has not provided information on human rights education, in particular regarding training on the Convention, in schools and in academic programmes (art. 7).

The Committee recommends that the State party take measures to ensure that human rights education is offered in schools and in academic programmes. It also urges the State party to pay particular attention to the training of teachers, civil registry staff and law enforcement officers.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

(17) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference held in Geneva in April 2009, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action (A/CONF.189/12 and Corr.1, chap. I), adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference (A/CONF.211/8, chap. I). The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dialogue with civil society

(18) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, when preparing its next periodic report.

Competence of the Committee to consider individual complaints

(19) The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention.

Common core document

(20) The Committee encourages the State party to regularly update its core document, last submitted in 2012 (HRI/CORE/BFA/2012), in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I).

Follow-up to concluding observations

(21) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 10, 14 and 15, above.

Recommendations of special importance

(22) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 8, 9 and 11 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination

(23) The Committee recommends that the State party's reports be made readily available to the general public when they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

(24) The Committee recommends that the State party submit its twentieth, twenty-first and twenty-second periodic reports in a single document by 17 August 2017, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see HRI/GEN/2/Rev.6, chap. I, para. 19).

28. Chad

(1) The Committee considered the sixteenth to eighteenth periodic reports of Chad, submitted in a single document (CERD/C/TCD/16-18), at its 2243rd and 2244th meetings (CERD/C/SR.2243 and 2244), held on 16 and 19 August 2013. At its 2258th and 2259th meetings (CERD/C/SR.2258 and 2259), held on 28 August 2013, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the timely submission of the sixteenth to eighteenth periodic reports of the State party, in a single document. It notes however that the reports do not contain sufficient information on the practical implementation of the Convention and are not fully in line with the treaty-specific reporting guidelines, and it encourages the State party to follow these guidelines when preparing its next reports.

(3) The Committee is satisfied with the open and constructive dialogue it has had with the high-level delegation sent by the State party. The Committee takes note with satisfaction of the oral presentation and the detailed responses provided by the delegation during consideration of the report.

B. Positive aspects

(4) The Committee notes with interest those legislative and institutional developments in the State party since the submission of its last periodic report that should help to combat discrimination, and notably:

(a) Act No. 032/PR/2009 on the establishment of a national training school for judges, and Decree No. 1251/PR/PM/MJ/2011 on the organization and operation of the training school;

(b) Ordinance No. 007/PR/2012 on reform of the status of judges;

(c) Ordinance No. 011/PR/2012 repealing Act No. 004 and on the elimination of corruption, illegal enrichment and related offences;

(d) Act No. 031/PR/2009 of 11 December 2009 establishing the Office of the Ombudsman and Decree No. 984/PR/PM/2012 on the organization and operation of the services provided by the Office of the Ombudsman;

(e) Act No. 008/PR/2013 on the organization of the civil registry;

(f) Interministerial Decree No. 3912/PR/PM/MDHLF/2011 on the establishment of a committee to monitor the implementation of international human rights instruments.

(5) The Committee welcomes the peace agreements signed by the State party, which have enabled it to secure its borders and protect refugee camps and camps for internally displaced persons.

C. Concerns and recommendations

Demographic composition

(6) The Committee regrets that the State party's core document (HRI/CORE/1/Add.88) contains information on the ethnic make-up of the population and on socioeconomic indicators by ethnic or national origin that dates from 1997, and that the State party has not updated this information in its periodic report.

In accordance with paragraphs 10 to 12 of its revised treaty-specific reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party collect and publish reliable, up-to-date and comprehensive statistical data on the ethnic composition of its population, in particular immigrants, refugees and displaced persons, as well as socioeconomic indicators disaggregated by ethnic and national origin; percentages of nomadic and sedentary populations; and ethno-linguistic characteristics, drawing on national surveys or censuses that are based on self-identification and that take account of ethnic and racial dimensions so that the State party and the Committee can better evaluate how the rights enshrined in the Convention are exercised in Chad.

The Committee requests the State party to provide these disaggregated data in its next report.

Failure to pass draft legislation

(7) The Committee is concerned at the fact that a large number of bills and preliminary bills are still in preparation or under consideration by the various authorities and bodies of the State party. Some of these have been pending for several years, notably the bill on racial discrimination, the draft amendments to the Criminal Code intended, among other things, to bring the State party's law into line with article 4 of the Convention, the draft personal and family code, the Refugees Bill, the bill on descent-based racial discrimination and the preliminary bill to bring the National Commission on Human Rights into line with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). In the same vein, the Committee is concerned at the fact that the decree implementing Act No. 008/PR/2013 on the organization of the civil registry, adopted on 10 May 2013, has still not been adopted (art. 2).

The Committee recommends that the State party finalize and adopt pending bills and preliminary bills as a matter of urgency, in order to properly implement the provisions of the Convention.

(8) The Committee regrets that the National Human Rights Action Plan 2012–2015 has not yet been finalized (art. 2).

The Committee recommends that the State party finalize the National Human Rights Action Plan 2012–2015 as a matter of urgency, in order to strengthen the framework for the promotion and protection of human rights, and to ensure that it addresses concerns regarding the elimination of racial discrimination and the promotion of the Convention.

Definition of racial discrimination

(9) The Committee is concerned at the fact that the State party's legislation on discrimination does not contain a definition of racial discrimination that is fully in line with article 1 of the Convention (arts. 1 and 2).

The Committee recommends that the State party incorporate into its legislation a definition of racial discrimination reflecting article 1 of the Convention – in particular in the bill on racial discrimination, as indicated by the State party in its report.

Criminalization of racist hate speech and incitement to discrimination and racial violence

(10) The Committee is concerned at the fact that the State party has not taken steps to bring its legislation into line with article 4 of the Convention, as recommended by the Committee in its previous concluding observations (CERD/C/TCD/CO/15, para. 16) (art. 4).

Recalling its general recommendations No. 1 (1972) on the obligations of States parties, No. 7 (1985) on the application of article 4 of the Convention and No. 15 (1993) on article 4 of the Convention, which state that the provisions of article 4 of the Convention are of a preventive and mandatory nature, the Committee repeats the recommendation made to the State party in its previous concluding observations, namely that it adopt specific legislation, or introduce provisions into its existing legislation, to fully implement all aspects of article 4 of the Convention. The Committee further recommends that the State party take advantage of the ongoing reform of its Criminal Code to incorporate provisions reflecting article 4 of the Convention.

(11) The Committee is concerned that article 5 of the Constitution, which provides that "all propaganda of an ethnic, tribal, regional or religious nature that seeks to undermine national unity or the secularity of the State shall be prohibited", may be interpreted or implemented in such a way as to dissuade members of ethnic or racial groups from asserting the rights that are guaranteed to them by the Convention and to punish any criticism of leaders, their policies or their actions (arts. 4 and 5).

The Committee recommends that the State party ensure that the provision of the Constitution regarding threats to national unity is not interpreted or implemented in such a way as to prevent members of ethnic or racial groups from asserting the rights that are guaranteed to them by the Convention or to punish any criticism of leaders, their policies or their actions.

Descent-based discrimination

(12) The Committee repeats the concerns expressed in its previous concluding observations (2009) (CERD/C/TCD/CO/15) regarding the existence of a caste system, which results in discrimination against certain population groups and serious violations of their rights (arts. 3 and 5).

Recalling its general recommendation No. 29 (2002) on descent-based discrimination, the Committee recommends that the State party:

(a) Take specific measures to combat and abolish all caste-related practices, particularly speeding up the adoption of specific legislation prohibiting descent-based discrimination, as indicated in its periodic report (CERD/C/TCD/16-18, para. 46);

(b) Continue and step up its campaigns to raise awareness and educate the population, particularly by raising awareness among traditional and religious leaders about the negative effects of the caste system and the plight of victims;

(c) Incorporate this issue in the National Action Plan on Human Rights 2012–2015 that it intends to adopt;

(d) Provide the Committee with additional detailed information on the nature and extent of this problem.

Harmful traditional practices regarding women

(13) The Committee is concerned at the fact that among some ethnic groups there are still customary practices that impede women's full enjoyment of Convention rights, in particular the right to own or inherit land. The Committee regrets that the State party has not yet

adopted the draft personal and family code despite having finalized the text several years ago (arts. 2 and 5).

Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party take urgent steps to put an end to practices that impede women's full enjoyment of their rights, in particular the right to own or inherit land. To that end the Committee urgently requests the State party to adopt and implement the draft personal and family code. It also recommends that the State party step up its awareness-raising campaigns for the general public, and in particular traditional and religious leaders, on equal rights for men and women. Lastly, it recommends that the State party make this issue a priority in the National Action Plan on Human Rights 2012–2015, whose adoption has been announced, and to inform the Committee of the outcome in its next periodic report.

Refugees, asylum seekers and displaced persons

(14) While noting the State party's efforts with regard to refugee reception and arrangements for displaced persons, the Committee notes with concern reports to the effect that access to basic public services such as education, health and justice, and to the civil registry, remains problematic for refugees and asylum seekers and that there is additional discrimination between refugees from the Sudan and from the Central African Republic with regard to birth registration. The Committee is also concerned about the fact that the Refugees Bill has not yet been finalized or adopted (arts. 5 and 6).

The Committee recommends that the State party take steps to ensure access to basic public services for refugees, asylum seekers and displaced persons; and to improve access to the civil registry for refugees and asylum seekers and ensure that births among refugees and asylum seekers, regardless of origin, are registered free of charge and in a systematic and non-discriminatory fashion. It also recommends that the State party run awareness-raising campaigns for parents in the camps in order to inform them of their rights. Lastly, it recommends that the State party promptly finalize and adopt the bill on the status of refugees, apply it and monitor its implementation.

(15) The Committee congratulates the State party on the steps taken to secure its borders and protect refugee camps and camps for internally displaced persons. It notes the relative integration of refugees hosted by the State party and draws attention to the high number of such refugees (380,000 at the beginning of 2013). The Committee also notes that the State party abolished the status of "displaced person" in 2012. It is nevertheless concerned at the continuing existence of pockets of displaced persons, whose rights are not always protected. The Committee further notes with concern that refugee and displaced women continue to be subjected to harmful customary practices and violence in the camps and that the perpetrators are not always punished (arts. 5 and 6).

Recalling its general recommendations No. 22 (1996) on article 5 and refugees and displaced persons and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:

(a) Continue with its steps to protect refugee camps and camps for displaced persons;

(b) Seek sustainable solutions for displaced persons who are still on these reception sites;

(c) Promote tolerance and understanding between displaced persons and local communities, for example through awareness-raising campaigns;

(d) Adopt legislation on displaced persons and a strategy encompassing all phases of internal displacement.

Taking account of general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party take additional, more effective measures to combat violence against refugee and displaced women, to provide them with assistance, and to investigate acts of violence and prosecute and punish the perpetrators.

Child soldiers

(16) The Committee takes note of the State party's efforts to demobilize child soldiers in the Army and armed groups. However, it regrets the lack of information on measures to reintegrate these children and avoid any risk of racial discrimination (art. 5).

The Committee recommends that the State party pursue its efforts to demobilize all child soldiers, whether in the army or in armed groups, find sustainable solutions for their reintegration in society without discrimination on the basis of race or ethnic or regional origin, and step up its campaigns to raise awareness of the problem of child soldiers.

Events of 2008

(17) The Committee takes note of the information provided by the State party on the implementation of the recommendations of the commission of enquiry set up following the events that took place in the State party between 28 January and 8 February 2008. It is nevertheless concerned at the fact that none of the 1,037 dossiers compiled following the complaint against persons unknown brought by the Chadian Government for crimes against humanity and war crimes have given rise to a decision and that, as a result, none of the perpetrators have yet been prosecuted or punished (arts. 5 and 6).

The Committee recommends that the State party take the necessary steps to speed up proceedings in the prosecution of perpetrators of the human rights violations committed during the events that took place between 28 January and 8 February 2008, to establish liability, and to punish the guilty and compensate the victims. The Committee recommends that the State party provide it with information on the outcome of these proceedings in its next report.

Justice reform and anti-corruption measures

(18) The Committee notes the State party's efforts to reform the justice system, notably through its project to support justice reform (PRAJUST), and to implement the conclusions and recommendations of the Justice Forum. It also notes the measures taken and the mechanisms set up to combat corruption, notably Ordinance No. 011/PR/2012 on the prevention and punishment of corruption and similar or related offences and the campaign against corruption and illegal enrichment (Operation Cobra). The Committee is nevertheless concerned at the fact that dysfunctions persist in the justice system and that all citizens do not yet have equal access to justice. The Committee is also concerned at the lack of information on guarantees of non-discrimination and equitable treatment that might prevent ethnic discrimination under Operation Cobra (arts. 2, 5 and 6).

The Committee recommends that the State party press on with the justice reform in order to reduce dysfunctions and to take steps to ensure that all citizens have access to the justice system in order to assert their rights, notably in respect of acts of racial discrimination, and paying particular attention to refugees, asylum seekers and displaced persons, nomadic or semi-nomadic groups and groups living in rural areas. It also recommends that the State party ensure that legal aid is effective. Lastly, the Committee recommends that the State party take measures, or steps up existing measures, to guard against the anti-corruption drive becoming an excuse for discrimination against members of particular ethnic groups.

Court proceedings for racial discrimination

(19) The Committee is concerned at the lack of information in the State party's report on complaints of racial discrimination or judgements handed down by the courts. It also regrets the lack of data on cases of racial discrimination before the National Commission on Human Rights and the Office of the Ombudsman (art. 6).

Referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls that the absence of complaints or judicial proceedings brought by victims of racial discrimination may reflect the non-existence of specific relevant legislation, ignorance of available remedies, unwillingness on the part of the authorities to prosecute perpetrators, a lack of confidence in the criminal justice system or victims' fear of reprisals. The Committee asks the State party to ensure that its domestic legislation contains appropriate provisions and that the public at large, particularly groups living in refugee camps and camps for displaced persons, nomadic and semi-nomadic groups and rural populations, are aware of their rights, including all the available legal remedies in the area of racial discrimination.

National Human Rights Institution

(20) The Committee notes with concern that the Chadian National Commission on Human Rights still does not comply with the Paris Principles, particularly owing to its lack of independence and of resources that enable it to function effectively (art. 2).

The Committee recommends that the State party adopt, as a matter of urgency, the bill to bring the National Commission on Human Rights into line with the Paris Principles, with a view to ensuring its effective independence and providing it with the resources it needs to function properly, in order to allow it to be accredited with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Conflicts between nomadic and other groups

(21) The Committee takes note of the information provided by the State party on the coexistence of herders (nomadic and semi-nomadic) and farmers. The Committee is nevertheless concerned that the tensions that frequently arise between these two groups could degenerate into conflicts between nomads or semi-nomads and other population groups (arts. 5 and 7).

The Committee recommends that the State party take measures, or strengthen existing measures, to reduce tensions between nomads or semi-nomads and other groups and ensure that those tensions do not degenerate into ethnic conflicts.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

(22) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, held in Geneva in April 2009, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action (A/CONF.189/12 and Corr.1, chap. I), adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference (A/CONF.211/8, chap. I). The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dialogue with civil society

(23) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, when preparing its next periodic report.

Competence of the Committee to consider individual complaints

(24) The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention.

Amendment to article 8 of the Convention

(25) The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Core document

(26) The Committee invites the State party to regularly update its core document (HRI/CORE/1/Add.88), submitted in 1997, in accordance with the requirements of the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (HRI/GEN/2/Rev.6, chap. I).

Follow-up to concluding observations

(27) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 8, 14 and 17 above.

Paragraphs of particular importance

(28) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 9, 10 and 13 and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination

(29) The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

(30) The Committee recommends that the State party submit its nineteenth and twentieth periodic reports in a single document by 16 September 2016, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see the harmonized reporting guidelines in HRI/GEN/2/Rev.6, chap. I, para. 19).

29. Chile

(1) The Committee on the Elimination of Racial Discrimination considered the nineteenth to twenty-first periodic reports of Chile, submitted in a single document (CERD/C/CHL/19-21), at its 2237th and 2238th meetings (CERD/C/SR.2237 and 2238), held on 13 and 14 August 2013. At its 2256th and 2257th meetings (CERD/C/SR.2256 and 2257), held on 27 August 2013, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the fact that the State party has submitted its periodic reports on such a regular basis. It wishes to express its appreciation for the frank dialogue held with the State party's large, high-level delegation, the responses that its members provided to the questions posed by Committee members and the additional information which was furnished in writing.

B. Positive aspects

(3) The Committee is appreciative of the delegation's commitment to finding ways of meeting the challenges faced by the State party. It welcomes the legislative and institutional advances made in the effort to combat racial discrimination since the State party's submission of its last report, including:

(a) Act No. 20.405, which provides for the creation of the National Institute of Human Rights;

(b) Act No. 20.609, which establishes measures to combat discrimination (the Anti-Discrimination Act);

(c) Act No. 20.430, which incorporates international standards for the protection of refugees into Chilean law;

(d) Act No. 20.507, which defines the offences of migrant smuggling and human trafficking, includes provisions for the protection of victims and guarantees the right to non-repatriation.

(4) The Committee welcomes the standing invitation extended to all thematic special procedures and draws attention, in particular, to the visit carried out in July 2013 by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

(5) The Committee notes with interest the work being done to preserve and promote the use of the languages of indigenous peoples.

(6) The Committee welcomes the documentation and oral statement provided by the National Institute of Human Rights. It is also pleased to take note of the active participation and contributions of civil society in the consideration of the reports.

C. Concerns and recommendations

National Institute of Human Rights

(7) While noting with satisfaction that the National Institute of Human Rights is accredited as an "A" status institution by the International Coordinating Committee of National Human Rights Institutions (ICC), the Committee on the Elimination of Racial Discrimination is concerned by the shortcomings identified by the ICC Subcommittee on Accreditation in terms of the immunities enjoyed by members of the Institute and its funding (art. 2).

The Committee encourages the State party to grant the Institute the broadest possible mandate and the means that it needs in order to promote and protect human rights and to guarantee the immunity of the Institute's members. It also encourages the State party to consider establishing an ombudsman's office with a section specializing in issues of racial discrimination whose staff would include intercultural facilitators at the local level.

Statistics

(8) While appreciative of the statistics furnished by the State party, the Committee needs a more exhaustive set of reliable demographic statistics, including economic and social indicators that have been disaggregated by ethnic or national origin, on, in particular, indigenous peoples, Afro-descendants and other vulnerable minority groups, including gypsies, so that it can evaluate the extent to which such persons are able to avail themselves of their rights in the State party (art. 2, paras. 1 (a)–(d)).

The Committee recommends that the State party expedite the compilation and publication of statistics on the composition of its population, disaggregated in the manner specified in article 1, paragraph 1, of the Convention, including official data from the 2012 national census and from any other subsequent study or census that provides information on self-identified ethnic groups. The Committee requests that the State party provide it with this type of disaggregated data in its next periodic report.

Definition of discrimination and special measures

(9) While noting the legislative advances made in the effort to combat racial discrimination, the Committee is concerned that references in the Anti-Discrimination Act to "arbitrary discrimination" could lead judges to arrive at an interpretation that would justify certain discriminatory actions and relieve the persons committing those actions of responsibility. The Committee also regrets that the law in question does not clearly provide for special measures that would guarantee the full and equal enjoyment of human rights and fundamental freedoms by all groups in the State party (art. 1, paras. 1 and 4, and art. 2, paras. 1 and 2).

The Committee encourages the State party to revise the categories of discrimination which are deemed to be "non-arbitrary" in order to bring the Anti-Discrimination Act into line with the Convention. It also recommends that the State party clarify the fact that the law provides for the use of special measures to combat racial discrimination, taking into account its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

Racial discrimination offences and racist hate speech

(10) The Committee reiterates its concern about the absence of a national law that is fully in conformity with article 4 of the Convention and that defines as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, racially motivated violence, and participation in organizations or activities that incite racial discrimination (CERD/C/CHL/CO/15-18, para. 18) (art. 1 and art. 4, paras. (a) and (b)).

In the light of general recommendation No. 15 (1993) on the mandatory character of article 4 of the Convention, the Committee recommends that the State party:

(a) Rectify the lack of legislation that fully conforms to article 4 of the Convention;

(b) Redouble its efforts to promote tolerance and to prevent and combat xenophobia and racial prejudice among the various groups in society;

(c) Include statistics and other information in its next periodic report on investigations, trials and judgements concerning acts of incitement to racial discrimination or incitement to racial hatred.

Equality before the courts and access to justice

(11) The Committee reiterates its concern about the absence of information on judicial cases concerning racial discrimination in the State party and follow-up thereto (CERD/C/CHL/CO/15-18, para. 26). The absence of such cases does not mean that racial discrimination does not exist but could be indicative of the presence of lacunae in the justice system. The Committee is also concerned by the obstacles faced by indigenous peoples in obtaining access to justice, including the unavailability of legal advice and interpretation services (arts. 2, 5, para. (a), and 6).

The Committee encourages the State party to continue its efforts to inform the members of the population about their rights and the legal remedies at their disposal for dealing with cases of racial discrimination and human rights violations. In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee invites the State party to take the necessary steps to ensure that indigenous peoples have access to justice by providing them with legal advice and interpretation services.

Constitutional recognition and consultation of indigenous peoples

(12) The Committee observes with regret the difficulties involved in winning passage of constitutional amendments in the State party and the slow pace of progress towards gaining constitutional recognition of the rights of indigenous peoples. It also observes with regret the slow pace of progress towards the establishment of an effective mechanism for consultation with indigenous peoples and for the promotion of their participation in accordance with international instruments such as, in particular, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples. It is concerned by the postponement of constitutional amendments until such time as a mechanism for consultation with indigenous peoples is in place. The Committee notes with regret that Supreme Decree No. 124 of the Ministry of Planning expressly precludes consultations concerning investment projects and has led to the award of contracts for production activities that impinge upon the rights of indigenous peoples. It also notes with regret that social tensions continue to grow (arts. 1, 2, 5 and 6).

Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee reiterates its preceding concluding observations (CERD/C/CHL/CO/15-18, para. 16) and urges the State party to:

(a) Place priority on recognizing the rights of indigenous peoples in the Constitution as a first step towards arriving at a consensus-based settlement of their claims;

(b) Fulfil its obligation to ensure that consultations are held with indigenous peoples and serve as a vehicle for their genuine participation in respect of any legislative or administrative decisions that may directly impinge upon their rights to the land and resources that they possess or that they have traditionally used, as established in the relevant international instruments;

(c) Take into account the recommendations made by the Special Rapporteur on the rights of indigenous peoples with regard to consultations with indigenous peoples;

(d) Expedite the establishment of an institutionalized mechanism for consultation in accordance with international standards.

Ancestral lands

(13) Recalling the treaties signed by the State party with indigenous peoples, especially the Mapuche people, the Committee is concerned that the public tenders used for the recovery of land by the National Indigenous Development Corporation (CONADI) prevent many members of indigenous peoples from gaining access to their ancestral lands. The Committee also notes with concern that representatives of indigenous peoples claim that the tracts of land given to them in exchange for their ancestral lands, even in nearby areas, have often proven to be unproductive and difficult to make use of and that they do not form part of an overall strategy for the restitution of indigenous peoples' rights. While the Committee takes note of the regulations concerning environmental impact assessments that will soon enter into force, it reiterates its concern about the fact that indigenous peoples complain that their territories continue to be negatively affected by the development of natural resources, the establishment of waste disposal sites and the pollution of water and other subsoil resources located in or on those lands. The Committee regrets that the existing plans to halt some production activities do not provide for measures of redress (arts. 2, 5 and 6).

The Committee reiterates the recommendations it has made to the State party and encourages it to:

(a) Expedite the restitution of ancestral lands and furnish effective and sufficient means of protecting indigenous peoples' rights to their ancestral lands and resources in accordance with the Convention, other relevant international instruments and the treaties signed by the State party with indigenous peoples (CERD/C/CHL/CO/15-18, para. 21);

(b) Increase its efforts to ensure that the restitution of indigenous peoples' lands forms part of an overall strategy for the restitution of their rights;

(c) Undertake environmental impact assessments on a systematic basis and hold free, prior and informed consultations with a view to obtaining indigenous peoples' free and fully informed consent before authorizing any investment project that could negatively affect their health or livelihoods in the areas that they inhabit (ibid., paras. 22 and 23);

(d) Take steps to provide redress for the damage sustained and place priority on resolving the environmental problems caused by such activities, which, according to a number of reports received by the Committee, are having harmful effects on the lives and livelihoods of indigenous peoples (ibid., para. 24).

The Counter-Terrorism Act and excessive use of force by agents of the State against indigenous peoples

(14) The Committee welcomes the amendments made to Act No. 18.314 (the Counter-Terrorism Act). However, it remains concerned by reports that this law continues to be applied to a disproportionate extent to members of the Mapuche people in respect of acts that have taken place in connection with their assertion of their rights, including their rights to their ancestral lands (CERD/C/CHL/CO/15-18, para. 15). The Committee is concerned by the lack of objective legal criteria for the enforcement of this law in respect of Mapuches who are charged with committing a terrorist act and for the determination by police officers and public prosecutors of what types of charges to bring against them, all of which could constitute a violation of the principles of legality, equality and non-discrimination. The Committee also reiterates its concern about the undue and excessive use of force against members of Mapuche communities, including children, women and older persons, by members of Carabineros and the Investigative Police during raids and other police

operations (ibid., para. 19) and about the impunity with which such abuse is committed. The Committee observes that the enforcement of the Counter-Terrorism Act and the undue and excessive use of force against members of the Mapuche people could have negative and discriminatory impacts on indigenous peoples that go beyond their impacts on the individuals suspected of having committed an offence (arts. 2 and 5).

The Committee recommends that the State party should, as a matter of urgency:

(a) Amend the Counter-Terrorism Act so that it specifies exactly what terrorist offences it covers;

(b) Ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts that take place in connection with the expression of social demands;

(c) Implement the recommendations made in this respect by the Human Rights Committee (2007) and by the Special Rapporteur on the rights of indigenous peoples (2003 and 2007) and take into account the preliminary recommendations made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2013);

(d) Investigate allegations that government employees have used violence against indigenous communities, particularly in the case of the Mapuche and Rapa Nui peoples;

(e) Monitor the application of the Counter-Terrorism Act and related practices in order to identify any discriminatory effect on indigenous peoples;

(f) Intensify and expand the human rights training provided to law enforcement officers and judicial officials to ensure the proper performance of their duties.

Indigenous languages and education

(15) The Committee regrets that Mapudungun is taught only in the first four grade levels in primary schools where there are a large number of indigenous students and that the number and size of scholarships for indigenous students are too small to allow recipients to cover educational expenses in institutions other than those located in indigenous communities or settlements. In view of the role of the media and, in particular, community radio broadcasts in preserving languages used in widely scattered indigenous communities, the Committee regrets that members of indigenous peoples are confronted with constraints in this respect (arts. 2 and 5 (e) (v)).

The Committee recommends that the State party allocate sufficient resources to revive indigenous languages and ensure that indigenous peoples have access to education. The Committee also recommends that the State party consider fostering the use of indigenous languages in primary and secondary education and promote the involvement of indigenous teachers. It also urges the State party to adopt the necessary legislative and other measures to reduce the constraints faced by indigenous peoples with regard to the use of community-based media in order to promote the use of indigenous languages.

Marginalization of indigenous peoples

(16) The Committee reiterates its concern about the fact that indigenous peoples continue to live in a state of poverty and marginalization (CERD/C/CHL/CO/15-18, para. 24). It continues to be concerned about the limited access which indigenous peoples, particularly indigenous women, have to a number of spheres of activity, especially those relating to employment, housing, health and education (ibid., para. 20). It is also concerned by the low

level of participation by indigenous peoples in public affairs and regrets the lack of institutional mechanisms of representation which have been endorsed by indigenous peoples (arts. 2 and 5, paras. (d) (i) and (e)).

The Committee reiterates its earlier recommendation and urges the State party to take the necessary steps to provide indigenous peoples with effective protection from racial discrimination. It also encourages the State party to work side by side with indigenous peoples to develop policies for raising the educational levels and attaining the full-fledged participation in public affairs of indigenous peoples, especially indigenous women. The Committee encourages the State party to take into account its general recommendations No. 25 (2000) on gender-related dimensions of racial discrimination and No. 32 (2009) on the meaning and scope of special measures in the Convention in connection with the development and adoption of such measures.

Afro-descendants

(17) The Committee regrets that the bill concerning the recognition of the Afro-descendant community in Chile has still not been passed (CERD/C/CHL/CO/15-18, para. 13). While it takes note that a survey is to be conducted, it is concerned by the lack of official information on the human rights situation with regard to the Afro-descendant population in the State party, which would appear to prevent the State party from gaining a fuller understanding of that situation and developing suitable public policies to benefit Afro-descendants (arts. 1, 2 and 5).

In the light of general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee reiterates its request that the State party provide information on the Afro-descendant members of the population. The Committee recommends that the State party expedite the passage of the bill concerning the recognition of the Afro-descendant population, include the category of Afro-descendants in its population and housing censuses, and adopt programmes and measures, including special measures, to ensure that Afro-descendants are able to avail themselves of their rights.

Migrants

(18) The Committee reiterates its concern about the fact that migrants, particularly those of Latin American origin, continue to face discrimination and obstacles to the exercise of their rights. It also notes with concern that some parts of the media draw upon prejudices and stereotypes when referring to migrants. The Committee is concerned that the principle of *jus soli* is not applied to the children of migrant workers who are in an irregular situation in Chile, which in some cases may cause such children to be stateless (arts. 2 and 5).

The Committee reiterates its recommendation that the State party adopt effective legislative and other measures as necessary to guarantee equality for migrants in the exercise of the rights recognized in the Convention (CERD/C/CHL/CO/15-18, para. 17). It further recommends that the State party adopt effective educational and awareness-raising measures as necessary to counter any tendency to stereotype or stigmatize migrants. The Committee encourages the State party to ensure that the draft bill for the amendment of the Migration Act provides that migrant workers in an irregular situation can apply for Chilean nationality for their children if they do not have another nationality and encourages the State party to pass that bill soon. The Committee draws the State party's attention to the need to fully enforce Act No. 20.507, which defines the offences of migrant smuggling and human trafficking.

Refugees and asylum seekers

(19) The Committee is concerned by reports that migrants and asylum seekers, especially Afro-descendants, have been subjected to abusive and discriminatory comments,

particularly along the country's northern border. It is concerned by the State party's use of restrictive pre-admission procedures that are not in accordance with due process guarantees as set forth in international instruments. It is also concerned about the highly vulnerable position of unaccompanied migrant children (arts. 2 and 5).

The Committee recalls its general recommendation No. 30 (2004) on discrimination against non-citizens and recommends that the State party suspend its use of restrictive pre-admission procedures and ensure that persons in need of international protection are properly identified in a manner that is free from racial discrimination. It also recommends that legal and policy measures dealing with migration and foreign nationals do not discriminate against anyone on the basis of race, colour, or ethnic or national origin. It urges the State party to ensure that the draft bill for the amendment of the Migration Act is in compliance with international standards regarding the treatment of migrants who are in need of international protection and encourages the State party to pass the bill soon. The Committee also recommends that the State party intensify the human rights training that it offers to civil servants.

D. Other recommendations

Ratification of other treaties

(20) The Committee encourages the State party to ratify the international treaties to which it is not yet a party, especially the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Amendment of article 8 of the Convention

(21) The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolution 67/156 of 20 December 2012, in which the General Assembly strongly urged States parties to accelerate their national procedures for ratification of this amendment to the Convention and to provide prompt notification in writing of their acceptance thereof.

The Durban Declaration and Programme of Action

(22) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention — particularly articles 2 to 7 — into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference held in Geneva in April 2009. The Committee requests that the State party include specific information in its next periodic report on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dissemination

(23) The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports also be made readily available in the official language and, as appropriate, other languages commonly used in the State party.

Consultations with civil society organizations

(24) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working to protect human rights, in particular those combating racial discrimination, in connection with the preparation of its next periodic report and its follow-up to these concluding observations.

Follow-up to concluding observations

(25) In accordance with rule 65, paragraph 1, of its rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 10, 12 and 14 above.

Paragraphs of particular importance

(26) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 13, 15, 17 and 18 above and requests the State party to provide detailed information in its next periodic report on the specific measures taken to act upon them.

Core document

(27) The Committee takes note with interest of the information provided by the State party's delegation concerning the finalization of its core document and invites the State party to submit that document in accordance with the harmonized guidelines for reporting to human rights treaty bodies, particularly those relating to the common core document which were approved at the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (see HRI/GEN/2/Rev.4).

Preparation of the next report

(28) The Committee recommends that the State party submit its twenty-second and twenty-third periodic reports, combined into a single document, by 31 August 2016, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limits of 40 pages for treaty-specific reports and 60–80 pages for the common core document (HRI/GEN/2/Rev.6, chap. I, para. 19).

30. Cyprus

(1) The Committee considered the seventeenth to twenty-second periodic reports of Cyprus (CERD/C/CYP/17-22), submitted in one document, at its 2254th and 2255th meetings (CERD/C/SR.2254 and 2255), held on 26 August 2013. At its 2262nd meeting (CERD/C/SR.2262), held on 30 August 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission by the State party, although with considerable delay, of its seventeenth to twenty-second periodic reports, which, in general, are in conformity with the Committee's guidelines, as well as the supplementary information provided orally by the high-level delegation. The Committee also welcomes the resumption of dialogue with the State party and finds encouraging the frank and constructive responses provided to the questions and the comments raised.

B. Positive aspects

(3) The Committee welcomes the legislative, institutional and other measures taken by the State party to combat racial discrimination since the examination of the last periodic report of the State party in 2001, in particular:

(a) The adoption of the Equal Treatment (Racial or Ethnic Origin) Law, L.59 (I)/2004, which prohibits discrimination on grounds of racial or ethnic origin in the field of employment, education, membership of professional organizations, social protection, and in the provision of goods and services, and institutes criminal offences for violations of its provisions;

(b) The adoption of the Equal Treatment in Employment and Occupation Law, L.58(I)/2004, which prohibits discrimination in employment and vocational training on grounds of racial or ethnic origin, religion and belief, inter alia, and provides for reversal of burden of proof, protection against victimization and the implementation of positive action;

(c) The adoption of law L.134(I)/2011 implementing European Union Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, which also makes racist motives an aggravating circumstance under the State party's criminal legislation;

(d) The adoption of laws L.22(III)/2004 and L.26(III)/2004 ratifying the Convention of the Council of Europe Against Cybercrime and its Additional Protocol on criminalization of acts of a racist and xenophobic nature committed through computer systems;

(e) The establishment of the Police Office for Combating Discrimination, which addresses issues relating to discrimination, racism and xenophobia in the police;

(f) The adoption of law L.2(I)/2006 on the Exercise of the Right to Vote and be Elected by Members of the Turkish community with Habitual Residence in the Free Areas of the Republic (Temporary Provisions);

(g) The measures taken to combat trafficking, including the adoption of law L.87(I)/2007 on The Combating of Trafficking and Exploitation of Persons and the Protection of Victims and its ongoing revision, the establishment of a national referral mechanism, the abolition of special visas for artists; and the adoption in April 2013 and implementation of the 2013–2015 National Action Plan against Trafficking in Human Beings, under which a series of training courses for relevant public officers has been undertaken;

(h) The broadening of the competence and powers of the Ombudsman, through law L.42(I)/2004 on The Combating of Racial and Other Forms of Discrimination (Commissioner) Law, to combat and eliminate discrimination in the public or private sector, including by considering complaints of discrimination on grounds of race, community, language, colour, religion, political or other belief, and national or ethnic origin.

(4) The Committee welcomes the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 27 June 2011. The Committee also welcomes the ratification of the Optional Protocols to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 29 April 2009, to the Convention on the Elimination of All Forms of Discrimination against Women, on 26 April 2002, and to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, on 6 April 2006 and 2 July 2010, respectively.

(5) The Committee also welcomes the work undertaken by the Ombudsman, including the studies on incitement to xenophobia and intolerance through public political speech, on

racist behaviour towards immigrants by medical personnel in public hospitals, on the education of Roma pupils, and on the response of schools to racist incidents, inter alia.

C. Factors and difficulties impeding the implementation of the Convention

(6) While the Committee notes that the State party does not exercise control over all of its territory and is thus unable to ensure full application of the Convention, it remains concerned that the current political situation hinders the efforts to protect vulnerable groups covered by the Convention in the territory of the Republic of Cyprus.

D. Concerns and recommendations

Peace process and intercommunal relations

(7) The Committee is concerned that, in spite of the opening of several crossing points since 2003 and the resulting increase in contact between the Greek Cypriot and the Turkish Cypriot communities, the protracted conflict in Cyprus and the continued division of the island maintain tension between the two communities.

The Committee encourages the State party to continue to invest every effort, with a view to seeking a comprehensive settlement of the Cyprus problem. The Committee also supports the recommendations of the Office of the United Nations High Commissioner for Human Rights with regard to addressing the underlying human rights issues and causes, including for those groups and communities whose rights are guaranteed by the Convention.

The Committee requests the State party to include in its next periodic report information on intercommunal initiatives undertaken by the State party and by civil society organizations to restore mutual confidence and improve relations between ethnic and/or religious communities as well as raise awareness through the impartial teaching of the history of Cyprus in schools and other State institutions.

Status of the Convention in the domestic legal order

(8) The Committee regrets that evidence in case law shows that the Convention has not been invoked in the Cypriot courts despite the fact that, according to the Constitution of the State party, the Convention supersedes all domestic laws (art. 2).

The Committee recommends that the State party raise the awareness of judges, lawyers and law enforcement officers on international norms on racial discrimination, including the Convention, applicable at the national level.

Prohibition of racial discrimination

(9) In spite of the adoption of several laws relating to racial discrimination, the Committee is concerned that the State party's legislation is fragmented, lacks coherence, and does not prohibit racial discrimination in all its forms, including in the enjoyment of all civil, cultural, economic, political and social rights. The Committee is concerned in particular at the following:

(a) While the definition of racial discrimination as per article 1 of the Convention has been reproduced in the law ratifying the Convention, prohibition of discrimination as well as penalties provided for by the Equal Treatment (Racial or Ethnic Origin) Law, L.59(I)/2004, concern only some of the grounds referred to in article 1 of the Convention;

(b) By limiting the scope of prohibition of racial discrimination to employment and certain social fields, the Equal Treatment (Racial or Ethnic Origin) Law, L.59(I)/2004, and the Equal Treatment in Employment and Occupation Law, L.58(I)/2004, do not meet the requirements of articles 1 and 5 of the Convention, which call for the prohibition and elimination of racial discrimination in the enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life;

(c) The principle of reversal of the burden of proof is applied only in cases of racial discrimination in the spheres of employment and occupation, according to the Equal Treatment in Employment and Occupation Law, L.58(I)/2004 (arts. 1, 2, 4 and 5).

The Committee calls on the State party to fill the gap in the penal, labour and administrative laws with regard to the prohibition and punishment of acts of discrimination on the grounds of race, colour, descent, or national or ethnic origin, in the political, economic, social, cultural or any other field of public life, in accordance with the provisions of articles 1, 4 and 5 of the Convention.

Moreover, the Committee calls on the State party to address the lack of coherence and the fragmentation of legislation relating to racial discrimination by consolidating the relevant laws into a comprehensive and internally consistent legal framework which would ensure clarity as to what is prohibited, and the penalties and reparations. The Committee also encourages the State party to expand the scope of the reversal of burden of proof to all civil law cases of racial discrimination. The Committee requests the State party to include in its next periodic report extracts of relevant laws, including those enacted in pursuance of this recommendation.

Discriminatory laws and regulations

(10) The Committee notes with concern that laws, regulations and policies which are discriminatory or lead to discrimination, such as the Tenant Law and those excluding migrant domestic workers from the scope of the Long-Term Residence Law, are in force in the State party (art. 2).

The Committee urges the State party to conduct a review of laws, regulations and policies, including those pertaining to migrant domestic workers, with a view to amending and nullifying those which have the effect of creating or perpetuating racial discrimination, in compliance with obligations under article 2 (c) of the Convention.

Information on cases related to racial discrimination

(11) The Committee notes the statement by the delegation that acts of racial discrimination are underreported. Moreover, the Committee regrets that information and statistics on cases related to racial discrimination brought before domestic courts and corresponding decisions were not included in the State party report in spite of the Committee's recommendation to that effect (A/56/18, para. 268) and the existence of a database which records criminal offences with a racist motive (arts. 5 and 6).

Referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls that the low number of complaints may be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, fear of social censure or reprisals, or an unwillingness on the part of the authorities to initiate proceedings. The Committee calls on the State party to ensure that the new framework to be adopted has the effect of encouraging the reporting of acts of racial discrimination and takes account of these factors.

It further recommends that the State party provide comprehensive information on this in its next periodic report, including information and statistics on cases related to racial discrimination, in particular their nature, the sanctions and the reparation provided to victims.

Verbal abuse and physical attacks motivated by right-wing extremism and neo Nazism

(12) The Committee is concerned at the rise in the incidence of racially motivated verbal abuse and physical attacks by right-wing extremists and neo-Nazi groups against persons of foreign origin, including persons of African descent, as well as against human rights defenders and Turkish Cypriots (art. 4).

The Committee urges the State to promptly investigate all allegations of racially motivated verbal abuse and physical attacks, to prosecute and, as appropriate, punish those found responsible, as well as provide reparation to victims. The Committee also urges the State party to take all necessary measures to prevent the occurrence of such acts in the future, including by declaring as illegal organizations which promote and incite racial discrimination, in accordance with the provisions of law L.134(I)/2011 on Combating Certain Forms and Expressions of Racism and Xenophobia.

Racist hate speech

(13) The Committee is concerned at the use of racist discourse by some politicians and in the media which vilifies and promotes prejudices against persons of foreign origin in the State party (arts. 4 and 5).

The Committee recommends that the State party strongly condemn the use of racist discourse by politicians and in the media. Furthermore, recalling that incitement to racial discrimination is outlawed in the State party, the Committee urges it to thoroughly investigate and, where appropriate, prosecute such acts.

Rights of minorities and freedom of religion or belief

(14) Noting the information provided by the delegation that the issue of affiliation of religious groups with one of the two communities in the State party will be addressed in future revisions of the Constitution, the Committee nonetheless expresses its concern that the constitutional provisions currently deny the members of these groups of their right to self-identification and the free exercise of their political rights. The Committee is also concerned that article 2 of the 1960 Constitution recognizes only those "religious groups" which had a membership of over one thousand on the date of the coming into force of the Constitution (art. 5).

The Committee recommends that the State party consider all possible means for guaranteeing the right to self-identification and the free exercise of political rights without distinction. Moreover, the Committee recommends that the State party define "minority" and the rights of persons belonging to minority groups in its legislation. The Committee requests the State party to provide in its next periodic report information on these provisions and on the economic and cultural contribution of minorities to the society.

(15) Recalling the intersectionality between ethnicity and religion, the Committee regrets that it has not been given information on the protection of the enjoyment of the freedom of religion or belief, other than the existing constitutional provisions (art. 5).

The Committee requests the State party to provide in its next periodic report information on the protection framework and implementation of freedom of religion or belief, without discrimination on grounds of race or ethnic origin, including for minorities from religions other than the Greek Orthodox Church which may experience discrimination.

Situation of the Roma community

(16) The Committee notes with concern that the Roma community continues to experience discrimination in access to education, employment and living conditions. Moreover, the Committee notes the information provided by the State party that measures taken to improve the situation of the Roma have not been as effective as they should have been. The Committee is further concerned at reports of racist attacks against Roma, as well as at their de facto segregation and information about the unwillingness of local communities to live side by side with them (arts. 2 and 5).

The Committee, recalling its general recommendation No. 27 (2000) on discrimination against Roma, recommends that the State party step up efforts to address the precarious situation of the Roma community. The Committee also calls on the State party to ensure that measures taken, including through the National Strategy for Roma Inclusion, do not perpetuate the situation of de facto segregation of the Roma community, but rather secure their integration and address the stigmatization, marginalization and racial discrimination they experience. It requests the State party to provide information on measures taken and progress made in its next periodic report.

Asylum procedure

(17) While noting the adoption of a policy of granting a six-month temporary residence and work permit to all Syrians who are holders of either a passport or an identity card, the Committee is concerned that the State party's asylum procedure may not provide effective protection for persons in need of international protection against refoulement. The Committee is also concerned at the differential treatment of asylum seekers, who are allowed to work only in certain sectors and receive some welfare benefits in the form of vouchers (art. 5).

The Committee urges the State party to strengthen legal safeguards to ensure effective protection against refoulement of persons in need of international protection, including by providing free legal aid without conditions to asylum seekers at all stages of the asylum procedure. The Committee also calls on the State party to guarantee asylum seekers equal labour rights and equal rights to welfare benefits, including by reversing the decision of disbursing welfare benefits through vouchers.

Citizenship

(18) The Committee notes with concern that naturalization requests, including by persons of South-East Asian origin, whose situations meet the State party's legal requirements for naturalization eligibility have sometimes been denied (art. 5).

The Committee recommends that the State party respect the right to nationality without discrimination and ensure that no particular groups of non-citizens are discriminated against with regard to access to naturalization. The Committee requests the State party to include in its next periodic report statistical data on naturalization requests and decisions thereon disaggregated by ethnic group, sex, length of residence in the State party, and any other relevant criteria. The Committee also requests the State party to include in its next periodic report information on how nationality laws and regulations are applied to those who are in the occupied territories.

Economic, social and cultural rights of vulnerable groups

(19) While taking note of the information provided by the State party on the population distribution by ethnic group, the Committee notes the lack of disaggregated data on foreign residents, who account for 19 per cent of the population. The Committee also regrets the

lack of statistical data in the State party's report and common core documents on the socioeconomic situation of the various groups (art. 5).

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party provide information on the composition of its population, disaggregated by national and ethnic origin, as well as statistical data on the socioeconomic situation of the various groups, to enable the Committee to evaluate the level of protection of their rights, including economic, social and cultural rights, under the Convention. The Committee also draws the attention of the State party to its general recommendation No. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (art. 1).

Migrants

(20) The Committee is concerned at the discrimination experienced by migrants, inter alia, in accessing employment and housing, which is exacerbated by a climate of austerity measures resulting from the current economic downturn, and the increasing discriminatory attitudes and racial stereotypes relating to persons of foreign origin (art. 5).

The Committee recommends that the State party step up efforts to protect the rights of migrants by combating racial stereotypes and discriminatory attitudes, including through awareness-raising campaigns, and by enforcing legislation against racial discrimination in all fields of public life. The Committee calls on the State party to include specific action to that effect in the 2013–2015 National Action Plan for the integration of third-country nationals legally residing in Cyprus. The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens.

Domestic workers

(21) The Committee notes the decrease in the number of complaints received by the Mechanism for Resolving Complaints of violations of domestic workers' employment contracts. Nevertheless, the Committee notes with concern that domestic workers remain vulnerable to abuse and exploitation, primarily due to the practice of linking work and residence permits to one employer as well as the exemption of their workplaces from the oversight of the inspectorate mechanism. The Committee is further concerned that the employment contracts of domestic workers, drawn up by the Ministry of Interior of the State party, put them at risk of forced labour and deprive them of equal rights to just and favourable conditions of work and trade union membership (art. 5).

The Committee urges the State party to ensure effective protection against abuse, exploitation and unequal work rights, including by:

(a) Ensuring that the working conditions of domestic workers are monitored by the labour inspectorate;

(b) Allowing domestic workers to change employer during the validity of their residence/work permits;

(c) Amending several provisions of article 2 of the standard contract of employment of domestic workers in order to prevent forced labour, and guarantee their right to just and favourable conditions of work and the freedom of association.

The Committee also calls on the State party to act upon the recommendations of the Ombudsman, as contained in the July 2013 report on conditions of domestic workers in Cyprus, and recommends that the State party ratify International Labour Organization (ILO) Convention No. 189 (2011) concerning decent work for domestic workers.

Education on tolerance and understanding of cultural diversity

(22) The Committee expresses concern at reports of racist incidents in schools against migrant children (art. 7).

Noting the State party's response to racist incidents in schools, including the dispatch of multidisciplinary teams to provide immediate assistance to schools concerned and the provision of psychological support to vulnerable children, the Committee calls on the State party to ensure that measures are also taken with a view to creating an environment of tolerance and understanding of cultural diversity in schools as well as in the society at large. The Committee also recommends that the State party conduct surveys on the society's perception of cultural diversity and act upon the findings.

National human rights institution

(23) Noting the adoption of law L.158(I)/2011 entrusting the mandate of a national human rights institution to the Ombudsman, the Committee notes with concern that the institution is not empowered to recruit its own personnel and, according to reports, is not provided with the necessary resources for the effective exercise of its very broad mandates (art. 2).

The Committee calls on the State party to guarantee the full operational independence and financial autonomy of the Ombudsman and to ensure that it is fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex). The Committee also recommends that the State party seek accreditation by the International Coordinating Committee of National Human Rights Institutions.

E. Other recommendations

Ratification of other treaties

(24) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to the Durban Declaration and Programme of Action

(25) In light of its general recommendation no. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Consultation with civil society organizations

(26) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations.

Dissemination

(27) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 13, 20 and 23 above.

Paragraphs of particular importance

(29) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 7, 12, 16 and 21, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(30) The Committee recommends that the State party submit its combined twenty-third and twenty-fourth periodic reports by 4 January 2016, taking into account the guidelines for the treaty-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document as per the harmonized guidelines on reporting (HRI/GEN.2/Rev.6, para. 19).

31. Honduras

(1) The Committee considered the combined initial and second to fifth periodic reports of Honduras, submitted in a single document (CERD/C/HND/1-5), at its 2667th and 2668th meetings (CERD/C/SR.2667 and 2668), held on 4 and 5 February 2014. At its 2288th meeting (CERD/C/SR.2288), held on 19 February 2014, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee notes with satisfaction the submission of the report of Honduras. Furthermore, while it regrets the late submission of the report, it expresses its appreciation for the presentation given by the delegation and the open and constructive dialogue as well as for the answers given to the many questions put by the Committee.

B. Positive aspects

(3) The Committee welcomes the introduction of measures for social inclusion and the advancement of human rights with a view to promoting equality in Honduras, in particular the following:

(a) The adoption of the First Public Policy and National Action Plan on Human Rights;

(b) The adoption of programmes such as "Con Chamba Vivis Mejor" (Life is better with a job) programme, launched by the Ministry of Labour and Social Security, which currently has 236 companies affiliated and 900 young people participating, and the "Bono 10,000" (Voucher 10,000) programme, which consists in granting conditional cash transfers;

(c) The celebration of the African Heritage in Honduras Month (Decree No. 330-2002).

(4) The Committee notes with satisfaction article 346 of the Constitution, which provides that it "is the duty of the State to adopt measures to protect the rights and interests of indigenous communities in the country, especially the lands and forests where they have settled".

(5) The Committee highlights the importance of the First World Summit of Afro-descendants held from 18 to 21 August 2011 in La Ceiba, on the occasion of the International Year for People of African Descent, which brought together more than 1,400 people from 44 countries in the Americas, Europe, Asia and the Caribbean. It welcomes the La Ceiba Declaration and Plan of Action.

(6) The Committee notes with satisfaction the standing invitation issued in 2010 to the United Nations special procedures.

C. Concerns and recommendations

Measures to combat structural discrimination

(7) The Committee notes that the indigenous peoples and Afro-Honduran communities (especially Garifuna and English-speaking Afro-Hondurans) are particularly badly affected by poverty and social exclusion. According to the data provided by the State party, poverty affects 88.7 per cent of indigenous and Afro-Honduran children (relative poverty – 10.4 per cent; extreme poverty – 8.4 per cent). According to the data, poverty is a particular problem among Tolupan, Lenca and Pech children, where figures of over 88 per cent are reported (art. 2, para. 2).

The Committee urges the State party to continue implementing social inclusion and identity-based development programmes that reduce inequalities and poverty with a view to eliminating structural and historical poverty in the State party. The Committee recommends that action be taken to break the link between poverty and racism, inter alia, through special measures or affirmative action, taking into account its general recommendations No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent. Such action should include multilingual intercultural education activities, bearing in mind the need to strengthen or revive the languages of the indigenous peoples and Afro-Honduran communities.

Statistical data

(8) The Committee is concerned by the fact that the report does not contain recent, reliable and comprehensive statistical data on the composition of the population, with disaggregated socioeconomic indicators, or information on the impact and results of social inclusion measures on the living conditions of the indigenous peoples and Afro-Honduran population (art. 2).

The Committee urges the State party to take into account the results of the 2013 census when developing its inclusion policies and social development programmes, to define indicators that will give a better picture of the situation in which the indigenous peoples and Afro-Honduran communities live and to devise methods for measuring outcomes so that the sustainability, scope and impact of its policies can be assessed. The Committee reminds the State party that disaggregated data are needed in order to develop public policies and suitable programmes for the population and to evaluate the implementation of the Convention in relation to the groups that make up society. The Committee requests the State party to include this information in its next report.

Definition of racial discrimination

(9) The Committee expresses its concern about the definition of racial discrimination contained in the Constitution and the Criminal Code, as it does not encompass all the elements of the definition of racial discrimination set forth in the Convention (art. 1).

In view of its general recommendations No. 14 (1994) and No. 29 (2002) on article 1, paragraph 1, of the Convention, the Committee recommends that the State party bring the current definitions of racial discrimination and of the offence of racial discrimination into line with the definition in article 1 of the Convention.

Definition of offences of racial discrimination (or legislative measures)

(10) The Committee notes that articles 321 and 321 A of the Criminal Code do not cover all the cases provided for in article 4 of the Convention (art. 4).

The Committee, taking into account its general recommendations No. 15 (1994) on article 4 of the Convention and No. 35 (2013) on combating hate speech, recommends that the State party bring the definition of the offence of racial discrimination into line with that contained in article 4 of the Convention.

Institutional measures

(11) The Committee notes with concern that the Ministry of Justice and Human Rights and the Ministry for Indigenous and Afro-Honduran Peoples have been merged with other institutions and thus no longer have ministerial status (art. 2, para. 1).

The Committee takes note of the State party's undertaking that, in spite of the merger, these institutions will continue to fulfil their original mandate and to keep their own budget. The Committee nonetheless regrets that these institutions have lost ministerial status and urges the State party to provide them with the resources required to discharge their duties in accordance with their mandate.

National Human Rights Institution and the National Commission against Racial Discrimination, Racism, Xenophobia and Other Related Forms of Intolerance

(12) The Committee notes the State party's budgetary efforts in favour of the Office of the National Commissioner for Human Rights (CONADEH); however, it is concerned at the loss of the Office's "A" status following an assessment of its compliance with the Paris Principles. The Committee also notes that steps have not been taken to ensure that the National Commission against Racial Discrimination, Racism, Xenophobia and Other Related Forms of Intolerance functions properly (art. 2, para. 1).

The Committee urges the State party to take the necessary steps to bring the Office of the National Commissioner for Human Rights into line with the Paris Principles (General Assembly resolution 48/134, annexed), including the appointment of a commissioner with the requisite knowledge of human rights through a process that adheres to the principles of financial and administrative transparency. The Committee also recommends that steps be taken to ensure the full functioning of the National Commission against Racial Discrimination, Racism, Xenophobia and Other Related Forms of Intolerance.

National Action Plan on Racism and Racial Discrimination

(13) Noting the efforts to draw up a National Action Plan on Racism and Racial Discrimination, the Committee nonetheless expresses its concern about the stereotypes and prejudices prevailing in society and the persistent tensions in the State party, which are obstacles to intercultural understanding and the building of an inclusive and diverse society. The Committee also notes the lack of information provided by the State party regarding the discrimination and racism encountered by certain groups, such as migrants (art. 2).

The Committee urges the State party to intensify awareness-raising campaigns against racial discrimination, stereotypes and all forms of discrimination. It also recommends that the State party actively pursue programmes fostering intercultural dialogue, tolerance and mutual understanding with regard to cultural diversity in the State party. The Committee further urges the State party to effectively implement the Convention through the National Action Plan on Racism and Racial Discrimination, currently being drawn up, in part by allocating sufficient human and financial resources for its implementation.

Measures against multiple discrimination

(14) The Committee is concerned that women belonging to indigenous and Afro-Honduran communities still face multiple forms of discrimination in all aspects of social, political, economic and cultural life (art. 2, para. 2).

The Committee recommends that the State party take into consideration the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and include a gender perspective in all policies and strategies against racial discrimination to address the multiple forms of discrimination encountered especially by women in indigenous and Afro-Honduran communities. It further recommends the production of disaggregated data on this topic.

The situation of human rights defenders

(15) While noting that a bill on protecting human rights defenders, journalists, social communicators and justice officials has been drafted, the Committee regrets that human rights defenders, especially indigenous and Afro-Honduran leaders, continue to be subject to serious physical assault. The Committee is also concerned by information received indicating the failure of the police and the judiciary to take appropriate action (art. 2).

The Committee recommends that the State party put in place all necessary measures to protect human rights defenders against all acts of intimidation or reprisal and any other arbitrary acts resulting from their activities. The Committee calls for the prompt adoption and implementation of the bill on protecting human rights defenders. It also recommends that the State party consider its general recommendation No. 13 (1994) on the training of law enforcement officials in the protection of human rights and urges the State party to improve the training of law enforcement officials, particularly police officers, with a view to fully implementing the provisions of the Convention.

Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage

(16) The Committee takes note of the information provided by the State party regarding the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage. The Committee notes that, between 2002 and 2013, the Special Prosecutor received 55 complaints for discrimination offences, of which 31 are under investigation, 17 were dismissed, 4 were brought to trial and 3 were resolved by other means. According to information from alternate sources, no penalties have been imposed for this offence. The Committee is concerned by the small number of complaints filed with the Special Prosecutor and by the disproportionality between the number of complaints dismissed and those brought to trial (art. 6).

The Committee recommends that the State party consider its general recommendation No. 31 (2005), on the prevention of racial discrimination in the administration and functioning of the criminal justice system, especially the obligation to facilitate access to justice by providing legal information and advice to victims as well as the need to ensure the accessibility of services so that indigenous peoples and Afro-Honduran communities, and their members, may bring individual or collective

complaints. The State party is urged to remind members of the Public Prosecution Service that it is in the public interest to prosecute racist acts given their harmful effect on social cohesion and society.

Organic Act on Employment and Economic Development Areas

(17) The Committee notes with concern the information received that the Organic Act on Employment and Economic Development Areas allows for the concession of strips of land to investors. These areas have operational and administrative autonomy, and may have autonomous and independent courts with exclusive jurisdiction and their own security forces, which could have drastic consequences on the indigenous peoples and Afro-Honduran communities living in these regions (art. 2, paras. 1 and 6).

The Committee requests the State party to provide further information about the Organic Act on Employment and Economic Development Areas. It recommends that the State party consider the compatibility of the Organic Act with the international instruments it has adopted, especially those relating to the rights of indigenous peoples and Afro-descendants, given that these international instruments have constitutional rank.

Independence of the judiciary

(18) Noting the additional information received following the dialogue between the Committee and the delegation of the State party, the Committee remains concerned about the removal from office of various judges, specifically the members of the Constitutional Chamber of the Supreme Court.

In the light of its general recommendation No. 31 (2005) and the Bangalore Principles of Judicial Conduct of 2001 (E/CN.4/2003/65, annexed), the Committee reminds the State party that the principle of judicial tenure is a fundamental guarantee for the protection of judicial independence and human rights, including those covered in the Convention. The Committee requests the State party to provide information about the removal from office on 12 December 2012 of four Constitutional Chamber judges.

The situation of Miskito divers

(19) The Committee remains concerned about the deplorable situation of Miskito divers who suffer work injuries because minimum safe diving conditions are not in place. Although it notes the establishment of an inter-agency commission to address and prevent the problem of underwater fishing, the Committee regrets the lack of information about measures taken to assist divers who have developed a disability and to prevent this abusive practice (art. 2, para. 2).

The Committee requests that the State party provide information about the exact situation of the Miskito divers concerned, the inspections programmes it has carried out on this issue, the availability of social programmes, insurance schemes and health services, any penalties imposed and compensation awarded and any other actions taken by the inter-agency commission. The Committee also requests information regarding the participation of the Miskito people in the decisions and measures taken in this connection.

Consultation with indigenous peoples and Afro-Honduran communities

(20) The Committee notes with concern the information received from various sources regarding the lack of systematic free, prior and informed consultation with indigenous and Afro-Honduran peoples on development and natural resources projects (including hydroelectric and mining projects) and other legislation or programmes affecting them. While the State party has made efforts to ensure the participation of indigenous peoples, the Committee is concerned at the lack of information on how this right has been implemented.

The Committee also notes the importance of free, prior and informed consultation and of access to justice in relation to the titling of lands and territories (art. 5 (c)).

In light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to establish practical mechanisms for implementing the right to consultation in a manner that respects the free, prior and informed consent of the affected peoples and communities and to ensure that consultations are carried out systematically and in good faith. It also recommends that an independent body carry out impact studies before permission is granted for natural resource exploration and exploitation in areas traditionally inhabited by indigenous peoples and Afro-Honduran communities. The Committee further recommends that indigenous peoples and Afro-Honduran communities be guaranteed access to the courts so that they may defend their traditional rights, their right to be consulted before concessions are awarded and their right to receive fair compensation for any harm or damage suffered. The Committee notes that ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) is directly applicable and that the absence of national legal provisions in this regard does not release the State party from its obligation to implement the right to free, prior and informed consultation.

Participation of indigenous peoples and Afro-Honduran communities

(21) Notwithstanding the progress achieved in Honduras, the Committee notes that indigenous peoples and Afro-Honduran communities still face significant barriers to full participation and representation in decision-making bodies (art. 5 (c)).

In the light of its general recommendations No. 23 (1997) and No. 34 (2011), the Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous peoples and Afro-Honduran communities, especially women, in all decision-making institutions, particularly in representative institutions and those dealing with public affairs, and that it take effective measures to ensure that all indigenous peoples and Afro-Honduran communities participate at all levels of public service. The Committee also recommends that the State party take special measures (affirmative action), in accordance with the Convention and the Committee's general recommendation No. 32 (2009).

D. Other recommendations

Declaration under article 14 of the Convention

(22) The Committee urges the State party to consider making the optional declaration provided for in article 14 of the Convention.

Amendment to article 8 of the Convention

(23) The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Durban Declaration and Programme of Action

(24) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the Convention into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against

Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dissemination of reports and concluding observations

(25) The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Consultations with civil society organizations

(26) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, in connection with the preparation of its next periodic report and its follow-up to these concluding observations.

Follow-up to concluding observations

(27) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 10, 17, 18 and 19 above.

Paragraphs of particular importance

(28) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 8, 16, 20 and 21 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Common core document

(29) The Committee recommends that the State party submit its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the Fifth Inter-Committee Meeting of the human rights treaty bodies, held in June 2006 (see document HRI/GEN/2/Rev.6, chap. I).

Preparation of the next report

(30) The Committee recommends that the State party submit its sixth to eighth periodic reports in a single document by 9 November 2017, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports (HRI/GEN/2/Rev.6, chap. I, para. 19).

32. Jamaica

(1) The Committee considered the sixteenth to twentieth periodic reports of Jamaica (CERD/C/JAM/16-20), submitted in one document, at its 2249th and 2250th meetings (CERD/C/SR.2249 and 2250), held on 21 and 22 August 2013. At its 2260th meeting, held on 29 August 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission by the State party of the combined sixteenth to twentieth periodic reports, albeit with a delay of eight years. While it regrets the limited information provided in the report, including with respect to follow-up to its previous concluding observations, the Committee welcomes the opportunity to renew its dialogue with the State party.

(3) The Committee also appreciates the focused dialogue with the delegation of the State party.

B. Positive aspects

(4) The Committee welcomes the ratification by the State party of the following international human rights instruments during the period under review:

(a) United Nations Convention against Transnational Organized Crime and its Protocols, namely, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, in 2003;

(b) United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education, in 2006;

(c) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2008;

(d) 1961 Convention on the Reduction of Statelessness, in 2013.

(5) The Committee also notes other initiatives taken by the State party to promote human rights and the implementation of the rights enshrined in the Convention, such as:

(a) The adoption of the National Cultural Policy, containing a chapter on the promotion of cultural diversity, in 2003;

(b) The establishment of the Office of the Children's Advocate pursuant to the adoption of the Child Care and Protection Act, in 2004;

(c) The enactment of the Trafficking in Persons (Prevention, Suppression and Punishment) Act of 2007 and the establishment of a National Task Force against Trafficking in Persons within the Ministry of National Security, in 2005;

(d) The adoption of national refugee policy to strengthen the ad hoc framework for the determination of refugees, in 2009;

(e) The establishment of the Independent Commission of Investigations (INDECOM) pursuant to the adoption of the Independent Commissions of Investigations Act of 2010.

C. Issues of concern and recommendations

Broad reservation to the Convention

(6) The Committee expresses concern at the broad and vague reservation to the Convention that still remains in place and which, inter alia, states that "ratification of the Convention by Jamaica does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligation to introduce judicial processes beyond those prescribed under the Constitution" (arts. 2 and 6).

The Committee recommends that the State party re-examine its broad and vague reservation to the Convention, and consider withdrawing it to ensure that the provisions of the Convention are fully applicable in the State party.

Absence of legislation on racial discrimination

(7) While noting the adoption of the Charter of Fundamental Rights and Freedoms, in 2011, which, inter alia, guarantees the right to equality before the law (Section 13(3)(g)) and the right to freedom from discrimination on the ground of race, place of origin, social class, colour, religion or political opinions (Section 13(3)(i)), the Committee remains concerned that the State party has yet to adopt comprehensive anti-discrimination legislation containing a clear definition of racial discrimination as required under the Convention (arts. 1, 2 and 6).

The Committee calls upon the State party to adopt comprehensive anti-discrimination legislation containing a clear definition of direct and indirect forms of racial discrimination that covers all fields of law and public life, in accordance with article 1, paragraph 1, of the Convention.

Independent national human rights institution

(8) While taking note of the information provided by the State party that efforts are being made to establish a human rights unit within the Ministry of Justice, the Committee expresses concern at the absence of an independent national human rights institution to ensure that the international human rights obligations of Jamaica are fully implemented at the national level (arts. 2 and 6).

The Committee recommends that the State party establish an independent and effective national human rights institution in accordance with the Principles relating to the status of national institutions (the Paris Principles), and requests that the State party provide information in its next periodic report on the progress achieved in this regard.

Court cases on racial discrimination

(9) The Committee notes the absence of court cases on indirect or direct discrimination based on race, colour descent, or national or ethnic origin, which may reflect the public's lack of awareness concerning the rights under the Convention or domestic law prohibiting discrimination or the availability of judicial remedies, the public's lack of confidence in police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination (arts. 2 and 6).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee encourages the State party to take effective measures to:

(a) Ensure that the lack of court cases on racial discrimination is not due to victims' lack of awareness of rights, individuals' lack of confidence in police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination;

(b) Disseminate information to the public regarding available protection and remedies against violations of the Convention;

(c) Sensitize law enforcement officials and members of the judiciary to the provisions of the Convention.

Implementation of article 4 of the Convention

(10) While taking note of the fact that Section 30(d) of the Television and Sound Broadcasting Regulations of 1996 prohibits broadcasting of "indecent and profane" materials, and that bans have been imposed on songs which promote violence, the Committee reiterates its concern that there is no domestic legislation giving full effect to article 4 of the Convention (arts. 2, 4 and 6).

The Committee reiterates its previous recommendation (CERD/C/60/CO/6, para. 6) to adopt specific legislative, administrative and other measures which give effect to article 4 of the Convention, in accordance, inter alia, with the Committee's general recommendation No. 7 (1985) on legislation to eradicate racial discrimination and general recommendation No. 15 (1993) on article 4 of the Convention.

Absence of disaggregated data

(11) While taking note of the ethnically diverse population of the State party, comprising persons of African, Indian, Chinese, Lebanese and European descent, including the German community in Seaford Town, as well as the Maroons, the Committee regrets the absence of information from the State party on the socioeconomic situation of such groups, which creates an obstacle to identifying and rectifying situations of inequality (arts. 1 and 5).

The Committee recommends that the State party establish a mechanism for systematic and consistent data collection, based on the principle of self-identification, in order to assess the situation of persons on the basis of colour or descent, including in areas such as education, employment, housing and representation in Government. In this regard, the Committee refers the State party to its general recommendation No. 8 (1990) on the interpretation and application of article 1 of the Convention and the revised treaty-specific reporting guidelines (CERD/C/2007/1, para. 11), and requests that such information be provided in its next periodic report.

Asylum seekers and refugees

(12) While welcoming the adoption of a national refugee policy in 2009, the Committee expresses concern at the information received that asylum seekers and refugees lack identity documentation to ensure the effective enjoyment of their rights, and that employers are often unaware of the fact that they do not need a work permit to take up employment. It is also concerned by reports that immigration officers failed to effectively screen Haitian nationals who arrived in the State party in February 2013 prior to their repatriation (art. 5).

The Committee recommends that the State party:

(a) Take effective measures to issue asylum seekers and refugees with refugee documents or other identity cards that are recognized in the State party in order to ensure that their rights are fully guaranteed in practice;

(b) Ensure that employers are aware of the fact that refugees do not need a work permit to take up employment; and

(c) Ensure that all asylum seekers and refugees are effectively screened to verify their individual protection needs prior to repatriation, including in cooperation with the United Nations High Commissioner for Refugees.

Involvement of civil society

(13) The Committee reiterates its regret at the lack of information in the State party's report concerning the contribution of civil society organizations in the promotion of ethnic harmony and raising awareness about the Convention (art. 7).

The Committee requests the State party to provide in its next periodic report information on activities undertaken by civil society organizations to promote ethnic harmony and to raise awareness about the Convention.

D. Other recommendations

Ratification of other treaties

(14) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not

yet ratified, in particular treaties containing provisions that have a direct bearing on racial discrimination, such as International Labour Organization (ILO) Conventions No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and No. 189 (2011) concerning decent work for domestic workers.

Follow-up to Durban Declaration and Programme of Action

(15) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and take into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Dissemination

(16) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

(17) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 6, 8 and 12 above.

Paragraphs of particular importance

(18) The Committee also wishes to draw the State party's attention to the particular importance of the recommendations in paragraphs 7, 11 and 13, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(19) The Committee recommends that the State party submit its twenty-first to twenty-third periodic reports in a single document by 4 July 2016, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document, as per the harmonized guidelines on reporting (HRI/GEN.2/Rev.6, chap. I, para. 19).

33. Kazakhstan

(1) The Committee considered the sixth and seventh periodic reports of Kazakhstan (CERD/C/KAZ/6-7), submitted in one document, at its 2279th and 2280th meetings, held on 12 and 13 February 2014 (see CERD/C/SR.2279 and 2280). At its 2291st meeting, held on 20 February 2014 (see CERD/C/SR.2291), it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the sixth and seventh periodic reports of the State party, which were drafted in conformity with the Committee's reporting

guidelines and addressed its previous concluding observations. The Committee also welcomes the regularity with which the State party submits its periodic reports.

(3) The Committee expresses its appreciation for the oral presentation and responses by the high-level delegation of the State party to the Committee's questions and comments, and the opportunity thus provided to engage in a constructive and continuing dialogue.

B. Positive aspects

(4) The Committee welcomes the following legislative and institutional steps taken by the State party towards the elimination of racial discrimination:

(a) Amendments to the Criminal Code (art. 141, para. 1) in 2011 to increase the criminal sanctions for violations of equal rights of citizens and for the use of torture;

(b) The adoption in 2011 of the Population Migration Act, which is aimed at providing social support to migrants and reducing illegal immigration;

(c) The enactment of the National Refugee Act in 2009 and Decision No. 183 of 9 March 2010 addressing, inter alia, the rules for granting, extending, withdrawing and rescinding refugee status;

(d) The implementation of policies to help preserve minority languages, including through the establishment of schools with instruction in ethnic minority languages and the funding of ethno-cultural associations for the preservation of ethnic cultures and traditions, and minority language media;

(e) The implementation of the *Nurly Kosh* programme for the resettlement of ethnic Kazakhs (*Oralman*) for the period 2009–2011;

(f) The conduct by the Supreme Court of seminars and training missions for judges on human rights standards and international human rights obligations, in 2010 and 2011;

(g) The adoption of the Plan of Action for implementing the national unity doctrine of Kazakhstan for the period 2011–2014 and the National Human Rights Action Plan for the period 2009–2012.

(5) The Committee welcomes the State party's ratification of or accession to the following international instruments:

(a) International Convention for the Protection of All Persons from Enforced Disappearance, on 27 February 2009;

(b) Optional Protocol to the International Covenant on Civil and Political Rights, on 30 June 2009;

(c) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 22 October 2008;

(d) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 31 July 2008.

C. Concerns and recommendations

Anti-discrimination legislation and its enforcement

(6) While welcoming the adoption by the State party of legal provisions prohibiting racial discrimination, as contained in particular in the Constitution, Labour Code, Administrative Offences Code and Civil and Criminal Procedure Codes, the Committee reiterates its concern that the State party has not adopted comprehensive legislation to

prevent and combat discrimination in all areas, including a definition encompassing both direct and indirect discrimination on the grounds of race and ethnic origin, which may lead to hindrances in access to justice for victims of racial discrimination (arts. 1, para. 1; 2, para. 1 (d); and 6).

Recalling its previous recommendation (CERD/C/KAZ/CO/4-5, para. 10), the Committee encourages the State party to continue its efforts to adopt a comprehensive anti-discrimination law, including a definition of direct and indirect discrimination, as stipulated in article 1, paragraph 1, of the Convention, in order to ensure effective access to justice and appropriate remedies for victims of racial discrimination. The Committee requests the State party to disseminate relevant information to the public, in particular to minorities, about what constitutes discrimination and about available legal remedies for persons facing racial discrimination.

Relevant statistical data

(7) The Committee welcomes the efforts of the State party to compile statistical data, such as on the number and size of individual ethnic groups living in the country; however, it is concerned about the limited information provided and at the absence of annual statistics on the social and economic situation of each of the ethnic groups with reference to education, employment, health and housing. The Committee is also concerned about the lack of data on the ethnic composition of the prison population and on the representation of ethnic minorities in the civil service (art. 2).

Drawing attention to the revised guidelines for reporting under the Convention (CERD/C/2007/1, paras. 10–12), and recalling its general recommendation No. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups or indigenous peoples, the Committee recommends that the State party collect and publicize reliable statistical data on the social and economic situation of individual ethnic groups, disaggregated by areas where minority groups live in substantial numbers, in order to provide an adequate empirical basis for policies to enhance the equal enjoyment of rights under the Convention in Kazakhstan. The Committee also recommends that the State party collect data on the ethnic composition of the prison population and on the representation of minority groups in the civil service. The Committee requests the State party to provide it with such information in its next periodic report.

Special measures

(8) While noting that the State party has taken steps to facilitate, inter alia, the representation of ethnic minorities in the Lower Chamber of the Parliament and education in ethnic minority languages in public schools, the Committee is concerned that special measures seem to be perceived by the State party as aimed at introducing "artificial inequality" or unequal or separate rights for different ethnic groups (arts. 1, para. 4; and 2, para. 2).

Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures, the Committee recommends that the State party amend its legislation to provide for the possibility of adopting special measures to promote equal opportunities and enhance strategies against inequality and discrimination, in accordance with article 1, paragraph 4, and article 2, paragraph 2, of the Convention.

Representation of minorities in political life and the civil service

(9) The Committee is concerned about the underrepresentation of minorities, in particular non-Kazakh ethnic groups, in political life and decision-making at the municipal, district, regional and national levels, taking into account the 2012 elections data and the last census. Noting the electoral reforms of 2007 and the representation of minorities in the

Assembly of the People of Kazakhstan (the People's Assembly), the Committee is concerned about the continuing limited participation of minorities, in particular in both Houses of Parliament, the Mazhilis and the Senate. The Committee is also concerned that the representation of ethnic minorities by nine deputies elected to the Mazhilis by the People's Assembly is not fully proportionate to the size of the ethnic minorities. The Committee is further concerned at reports about significant underrepresentation of non-Kazakh ethnic groups in the civil service (arts. 1, para. 4; 2, para. 2; and 5 (c) and (e) (i)).

Recalling its previous recommendations (CERD/C/KAZ/CO/4-5, paras. 11 and 12), the Committee encourages the State party to:

(a) Ensure a fair and adequate representation of minority groups in political life and decision-making bodies at all levels by, inter alia, adopting special measures;

(b) Establish in particular mechanisms for the election of members of the People's Assembly and of the deputies nominated to the Mazhilis by the People's Assembly in order to allow for the fair representation of minority communities and due consultation with them on matters affecting their rights;

(c) Take effective measures to facilitate and increase the representation of non-Kazakh ethnic groups in the civil service, including by reviewing the occupational requirements for public sector jobs and limiting the requirement for mastery of the Kazakh language only to positions where it is essential;

(d) Provide data in its next periodic report, disaggregated by ethnic group, on the representation of minority groups in political bodies and decision-making positions, and in the civil service.

Commissioner for Human Rights

(10) The Committee takes note of the functioning of the Commissioner for Human Rights and the National Centre for Human Rights, which supports the Commissioner in discharging his mandate. The Committee is concerned that (a) the Commissioner lacks adequate budgetary and human resources; (b) the mandate of the Commissioner excludes consideration of complaints against various State authorities; and (c) there have been no recent public reports on the Commissioner's work against racial discrimination (art. 2, para. 2).

Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention, the Committee recommends that the State party:

(a) Undertake legislative changes and strengthen the Commissioner's mandate to effectively promote human rights and fight against all forms of racial discrimination;

(b) Provide the Commissioner with adequate financial and human resources, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134 of 20 December 1993;

(c) Take steps to ensure that the Commissioner enjoys public confidence and full independence;

(d) Make public the reports on the Commissioner's work against racial discrimination on a regular basis.

Hate speech

(11) While noting the information about the application of legislation against incitement to national, ethnic or racial enmity in several cases, the Committee expresses its concern at the absence of information about the measures taken to combat incidents of hate speech, in particular against non-citizens, including in the media and on the Internet (arts. 2, para. 1 (a) and (d); 4 (a), (b) and (c); and 7).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens and general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party effectively investigate and, as appropriate, prosecute and punish acts of hate speech and take appropriate measures to combat hate speech in the media and on the Internet, regardless of the status of the perpetrators. The Committee also recommends that the State party take further measures to promote tolerance, intercultural dialogue and respect for diversity, with a focus on the role of journalists and public officials in that regard.

Legislation against incitement to violence and extremist organizations

(12) The Committee notes with concern that the State party's Criminal Code (arts. 164 and 337, para. 2) may not fully respond to the requirements of article 4 (a) and (b) of the Convention.

Drawing attention to its general recommendation No. 15 (1993) on article 4 of the Convention and general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party review its legislation so as:

(a) To prohibit incitement to violence against any group of persons on account of race, colour or ethnic origin;

(b) To declare illegal and prohibit all forms of organization and all propaganda activities that promote and incite racial hatred;

(c) To prohibit and punish participation in such organizations or activities, in line with article 4 (a) and (b) of the Convention.

Criminal legislation and freedom of expression

(13) The Committee expresses its concern at the overly broad provisions of article 164 of the Criminal Code, such as on incitement to national, ethnic or racial enmity or discord, or insult to the national honour and dignity or religious feelings of citizens, which may lead to unnecessary or disproportionate interference with freedom of expression, including that of members of minority communities (arts. 4 and 5 (d) (viii)).

In the light of its general recommendation No. 15 (1993) on article 4 of the Convention and general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party clearly define criminal offences, in particular those in article 164 of the Criminal Code, so as to ensure that they do not result in unnecessary or disproportionate interference with freedom of expression, including that of members of minority communities.

Labour legislation

(14) While noting that section 7, paragraph 2, of the Labour Code of 2007 covers the prohibited grounds of discrimination enumerated in article 1, paragraph 1, of the Convention, the Committee expresses its concern at the absence of prohibition of discrimination based on colour (arts. 1, para. 1, and 5 (e) (i)).

The Committee recommends that the State party consider amending the Labour Code in order to prohibit explicitly discrimination based on colour, in line with article 1, paragraph 1, of the Convention.

Migrant workers

(15) While welcoming the adoption of the Population Migration Act of 2011, the Committee is concerned that the system of work permits and quotas for recruiting foreign workers, and Decree No. 45 of 13 January 2012, which introduced restrictions for sole traders based on Kazakh citizenship, are overly restrictive and may lead to discrimination, in violation of the Convention and of article 7, paragraph 1, of the Labour Code of Kazakhstan (art. 5 (e) (i)).

The Committee recommends that the State party:

(a) Take steps to facilitate the regularization of, and prevent any discrimination against, foreign workers by flexible application of the work permit and quota systems, while ensuring fair competition in their recruitment;

(b) Consider amending the Population Migration Act of 2011 and related regulations to ensure that the requirements to become a sole trader are not overly restrictive and do not discriminate on the grounds set out in article 1, paragraph 1, of the Convention and those that are prohibited in the State party's legislation.

(16) The Committee is concerned about the irregular status of many migrant workers in the country, who have limited access to public services and whose children are often denied access to education, and to medical treatment other than in emergencies. The Committee is also concerned about the absence of disaggregated data on migrant workers, who are often at risk of violence, extortion and trafficking of human beings (art. 5 (e) (iv) and (v)).

The Committee recommends that the State party:

(a) Take special measures to ensure that migrant workers and their families enjoy equal access to education, health care and other essential public services, including social insurance;

(b) Compile disaggregated data on all categories of migrant workers and on their enjoyment of their rights;

(c) Strengthen measures to prevent incidents of violence, extortion and trafficking against migrant workers and prosecute and punish perpetrators of such acts;

(d) Consider acceding to International Labour Organization Convention No. 143 (1975) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers.

Education

(17) While noting with appreciation the growing quality of education in and the study of minority languages, and the number of schools, textbooks and qualified staff involved, the Committee is concerned that the numbers of ethnic minority students, at all levels of education, who receive instruction in and study ethnic minority languages remain low compared to the ratio of minorities in the overall population, which amounts to around 35 per cent. The Committee is particularly concerned that minorities account for only 7.8 per cent of students in higher education institutions (arts. 5 (e) (v); and 7).

The Committee recommends that the State party:

(a) Take additional measures to increase access for children from ethnic minorities to instruction in and study of their mother tongue, including through the

establishment of schools and the provision of textbooks in minority languages and of adequate professional staff;

(b) Adopt special measures to ensure improved access to higher education for students from all ethnic groups without discrimination.

Refugees and asylum seekers

(18) While noting the adoption in December 2009 of the Law on Refugees, which implements the principle of non-refoulement and enhances the transparency and accessibility of the refugee determination procedure, the Committee is concerned at the absence of a practical mechanism for the referral of refugees between the Migration Police Departments and the Border Guard Service, which may lead to the protracted detention of asylum seekers without their having access to the territory of the State party and may increase the risk of their refoulement (arts. 2 and 5).

The Committee recommends that the State party ensure that standardized asylum procedures are implemented and establish a referral procedure for the Migration Police Departments and the Border Guard Service at all border points, including international airports and transit zones, in compliance with international norms and standards, in particular the principle of non-refoulement.

Stateless persons

(19) The Committee is concerned about the absence of data concerning the number of stateless persons and persons at risk of statelessness because of lack of documentation, and of information about the situation of stateless persons (arts. 2 and 5).

The Committee recommends that the State party:

(a) Take measures to address statelessness;

(b) Provide data in its next periodic report on the acquisition of Kazakh citizenship and the number of persons who lack valid identity documents, as well as the exact number of stateless persons and of persons at risk of statelessness, including their ethnic origin;

(c) Take measures to ensure that the State party's laws concerning the acquisition of Kazakh nationality do not increase the number of stateless persons;

(d) Consider acceding to the 1961 Convention on the Reduction of Statelessness, as a matter of priority.

Roma

(20) While noting the information provided by the State party on the situation of the 4,065 Roma living in Kazakhstan, including the reported absence of complaints by Roma concerning racial discrimination, the Committee is concerned about the lack of detailed information on the enjoyment by Roma of their rights under the Convention, in particular as regards their access to employment, education, health, housing and services (arts. 2, paras. 1 (c) and 2; 3; and 5 (e) (i), (iii), (iv) and (v)).

In the light of its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party take special measures to alleviate the reportedly precarious socioeconomic situation of Roma, ensuring their enjoyment of economic, social and cultural rights without prejudice or stereotyping, and provide Roma victims of discrimination with effective access to remedies. The Committee also recommends that the State party submit updated information on the enjoyment of economic, social and cultural rights by Roma in its next periodic report.

Access to remedies and direct applicability of the Convention

(21) The Committee notes with concern the low number of complaints and the absence of court decisions in administrative, civil and criminal proceedings on acts of racial discrimination, which are indicative of a lack of practical remedies for victims of such acts. While noting the reaffirmation by the State party of the direct applicability of the Convention in its domestic legal order, the Committee also notes with concern the absence of information on cases in which the Convention was applied by judicial and administrative bodies. Moreover, the Committee notes with concern the low number of cases in which discrimination was established by the Commissioner for Human Rights, as compared to the number of complaints of racial discrimination received, and the lack of support measures for victims to litigate in discrimination cases (arts. 1, para. 1; 2, para. 1 (d); 4; and 6).

Recalling its general recommendation No. 26 (2000) on article 6 and general recommendation No. 31 (2005) on prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:

(a) Ensure effective remedies, including just and adequate reparation or satisfaction, through the competent national courts and other State institutions for any act of racial discrimination, by making appropriate use of the anti-discrimination legislation;

(b) Provide the Committee with data on the application of the Convention through judicial and administrative decisions in its next periodic report;

(c) Undertake a thorough analysis of the reasons for the low number of cases in which discrimination was established by the Commissioner for Human Rights and ensure that the Commissioner effectively investigates all complaints of racial discrimination;

(d) Implement measures to strengthen the legal aid system and provide assistance to individuals and associations to facilitate litigation in discrimination cases;

(e) Undertake training of public officials, including law enforcement officials, members of the judiciary and lawyers, concerning legal protection and safeguards against racial discrimination, drawing attention to the Committee's general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights.

D. Other recommendations

Ratification of other treaties

(22) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education 1960.

Follow-up to the Durban Declaration and Programme of Action

(23) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in

Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Consultations with organizations of civil society

(24) The Committee recommends that the State party expand its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.

Amendments to article 8, paragraph 6, of the Convention

(25) The Committee reiterates its recommendation contained in the previous concluding observations that the State party ratify the amendment to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly strongly urged States parties to accelerate their national ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Dissemination

(26) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

(27) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 8, 15 and 18 above.

Paragraphs of particular importance

(28) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 19 and 21 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

(29) The Committee recommends that the State party submit its eighth to tenth periodic reports, in a single document, by 25 September 2017, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (see HRI/GEN.2/Rev.6, chap. I, para. 19).

34. Luxembourg

(1) The Committee considered the combined fourteenth to seventeenth periodic reports of Luxembourg (CERD/C/LUX/14-17), at its 2281st and 2282nd meetings (CERD/C/SR.2281 and 2282), held on 13 and 14 February 2014. At its 2291st and 2292nd

meetings (CERD/C/SR.2291 and 2292), held on 20 and 21 February 2014, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission, in a single document, of the State party's fourteenth to seventeenth periodic reports drafted in conformity with the treaty-specific reporting guidelines. However, it regrets the late submission of the reports and encourages the State party to meet the deadlines for submission of its future reports.

(3) The Committee is pleased with the frank and constructive dialogue it held with the delegation of the State party. The Committee takes note with satisfaction of the oral statement and detailed replies given by the delegation during the consideration of the report.

B. Positive aspects

(4) The Committee notes with interest the legislative, institutional, administrative and political measures taken by the State party since its last periodic report, which should contribute to combating racial discrimination, particularly:

(a) The adoption of the Act of 23 October 2008 on Luxembourg nationality, which makes it possible to retain one's nationality of origin when acquiring Luxembourg nationality and allows the acquisition of Luxembourg nationality for children born in the Grand Duchy to foreign parents, one of whom was also born in Luxembourg, as well as the recovery of Luxembourg nationality for those who have lost it by residing outside the national territory;

(b) The adoption of the Act of 16 December 2008 concerning the reception and integration of foreigners in the Grand Duchy of Luxembourg, which provided for the establishment of the Luxembourg Reception and Integration Agency;

(c) The adoption of the Act of 21 November 2008 which provided for the establishment of the National Advisory Commission on Human Rights in the Grand Duchy of Luxembourg;

(d) The adoption of the Act of 28 November 2006 on equal treatment, which provided for the establishment of the Centre for Equal Treatment;

(e) The criminalization of Holocaust denial under article 457-3 of the Criminal Code;

(f) The adoption of the national multi-year plan of action to achieve integration and combat discrimination, 2010–2014;

(g) The establishment of the welcome and integration contract, which is designed to facilitate the integration of foreigners and can reduce the period of residence required as a condition for acquiring Luxembourg nationality;

(h) The establishment of BEE SECURE Stopline, a programme combating Internet racism.

(5) The Committee also notes with interest that, since it last considered a periodic report from the State party, Luxembourg has ratified the following international instruments:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 May 2010);

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2 September 2011);

(c) The Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (26 September 2011);

(d) Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights; 21 March 2006).

C. Concerns and recommendations

Ethnic composition of the population

(6) The Committee takes note of the fact that, for philosophical and historical reasons, the State party does not collect ethnic data on populations who live on its territory. Notwithstanding, the Committee notes with concern the absence of any information in the State party's report on the socioeconomic indicators of different population groups who live on its territory, disaggregated by nationality and ethnic origin (art. 1).

In accordance with paragraphs 10 to 12 of its revised treaty-specific reporting guidelines (CERD/C/2007/1) and taking into account its general recommendation No. 24 (1999) concerning article 1 of the Convention, the Committee recommends that the State party collect and publish comprehensive, reliable and up-to-date statistical data on socioeconomic indicators, disaggregated by nationality and ethnic origin, including on immigrants and refugees, drawn from national surveys or censuses that are based on self-identification, to allow the Committee to better assess how the rights enshrined in the Convention are exercised in Luxembourg.

The Committee also recommends that the State party put in place instruments for collecting such data and provide information on its progress in that regard in its next report.

Definition of racial discrimination

(7) The Committee is concerned that the definition of racial discrimination contained in article 1, paragraph 1, of the Act of 28 November 2006 on equal treatment does not include the criteria of national origin, colour or descent, and therefore is not quite consistent with article 1 of the Convention (arts. 1 and 2).

The Committee recommends that the State party revise article 1, paragraph 1, of the Act of 28 November 2006 to bring its legislation fully into line with the Convention.

Direct application of the Convention by national courts

(8) The Committee notes that the State party's legislation provides for the primacy of international treaties over national law. However, the Committee regrets that the State party has not provided any information on cases in which the Convention has been directly applied by its courts (art. 2).

The Committee recommends that the State party continue its efforts to raise awareness among judges, magistrates and lawyers of the provisions of the Convention to ensure that they are invoked and applied directly by the courts of the State party.

Institutional mechanisms

(9) The Committee regrets that the new National Council for Foreigners has not renewed the mandate of the special standing commission to combat racial discrimination and has replaced it with a commission on integration and equal opportunities, which is likely to reduce the scope of racial discrimination as an issue within the work of the National Council (art. 2).

The Committee encourages the State party to consider reallocating the powers of the former special standing commission on racial discrimination so as to maintain the scope of the issue of racial discrimination.

(10) The Committee is concerned that the Luxembourg Reception and Integration Agency does not have the necessary resources, particularly human resources, to carry out

its mandate, which may prevent it from working effectively in the event of large flows of migrants (art. 2).

The Committee recommends that the State party undertake a review of the functioning and needs of the Luxembourg Reception and Integration Agency and provide it with sufficient human resources to fulfil its mandate effectively.

Aggravating circumstance for racially motivated crimes

(11) The Committee notes the information provided by the State party to the effect that Luxembourg criminal law does not consider motive as an aggravating circumstance in a crime. For this reason, the Committee is concerned by the fact that "racial motives for a crime are not considered to be an aggravating circumstance" (CERD/C/LUX/14-17, para. 42) (art. 4).

The Committee reiterates its recommendation to the State party that it should introduce into its criminal legislation an aggravating circumstance for racially motivated crimes.

Compliance with article 4 of the Convention

(12) The Committee notes the explanations given by the State party's delegation on the legislative provisions making it possible to ban a priori any organizations that incite racial discrimination and, following a court decision, to impose penalties on them up to and including dissolution if they undermine public order. It also notes that the Criminal Code provides for the punishment of legal persons, including organizations that incite racial discrimination. The Committee regrets, however, that the State party has not introduced into its legislation provisions specifically banning and declaring illegal any organization that incites racial discrimination (art. 4).

Recalling its general recommendation No. 15 (1993), which states that all the provisions of article 4 of the Convention are of a mandatory and preventive nature, and taking into consideration its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party ensure that all elements of article 4 of the Convention are incorporated into its legislation. In that connection, the Committee requests the State party to provide information regarding the current judicial procedure for banning and dissolving organizations that incite racial hatred.

Asylum seekers

(13) The Committee is concerned that asylum seekers have to wait for nine months after submitting a request before they are granted access to the labour market (art. 5).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party reduce the period of nine months so as to facilitate more rapid access for asylum seekers to the labour market.

Discrimination in respect of employment

(14) While noting the information provided by the State party's delegation, the Committee is concerned by the difficulties encountered with regard to labour market access by persons of foreign origin, mainly from countries outside the European Union, and particularly women (art. 5).

In the light of its general recommendations No. 30 (2004) on discrimination against non-citizens and No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party take all necessary measures to facilitate access to the labour market for persons of foreign, non-European Union origin, particularly women. The Committee also recommends that the State party

periodically evaluate the measures introduced to this end, in order to adjust or improve them. Finally, the Committee recommends that the State party promote the effective application of labour legislation, provide judges and lawyers with training on this legislation and inform the Committee of cases related to discrimination in the labour market.

Court proceedings for racial discrimination

(15) While noting the information provided by the State party, the Committee regrets that the State party has not provided detailed information on complaints concerning racial discrimination recorded and considered, nor any information relating to judgements handed down by the courts. The Committee is concerned that the Centre for Equal Treatment cannot be a party to legal proceedings (art. 6).

Referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee invites the State party to provide more detailed information on the content of the complaints and decisions rendered by the courts related to racial discrimination. The Committee asks the State party to ensure that the public, in particular persons of foreign origin from countries outside the European Union, is aware of its rights, including all legal remedies for racial discrimination. The Committee also recommends that the State party amend the Act of 28 November 2006 to give the Centre for Equal Treatment the capacity to take part in legal proceedings.

Discriminatory stereotypes in the media

(16) The Committee is concerned that discriminatory stereotypes persist in the media with regard to certain groups and are of a nature to generate prejudice against these groups (arts. 2 and 7).

The Committee recommends that the State party, while respecting international standards relating to freedom of the press, take monitoring measures in respect of the media and prevent the spread of negative stereotypes with regard to certain ethnic groups. It also recommends that the State party conduct campaigns to raise the awareness of journalists, and the whole population, of the Convention.

D. Other recommendations

Ratification of other instruments

(17) Bearing in mind the indivisible nature of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments to which it is not already a party, especially those that relate directly to racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Labour Organization Domestic Workers Convention, 2011 (No. 189).

Dialogue with civil society

(18) The Committee recommends that the State party consult and expand its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, when preparing its next periodic report.

Follow-up to concluding observations

(19) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 12 and 15 above.

Recommendations of particular importance

(20) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 9, 11 and 16 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination

(21) The Committee recommends that the State party's periodic reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

(22) The Committee recommends that the State party submit its eighteenth, nineteenth and twentieth periodic reports in a single document by 31 May 2017, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see the harmonized reporting guidelines in HRI/GEN/2/Rev.6, chapter I, paragraph 19).

35. Montenegro

(1) The Committee considered the combined second and third periodic reports of Montenegro, submitted in one document (CERD/C/MNE/2-3), at its 2269th and 2270th meetings (CERD/C/SR.2269 and 2270), held on 5 and 6 February 2014. At its 2285th and 2286th meetings (CERD/C/SR.2285 and 2286), held on 17 and 18 February 2014, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined second and third periodic reports of the State party, which are in conformity with the Committee's reporting guidelines. The Committee thanks the State party's large, high-level, multisectoral and gender-balanced delegation for its oral presentation and its responses to the Committee's questions and comments.

B. Positive aspects

(3) The Committee notes with appreciation a number of legislative and policy developments towards the elimination of racial discrimination, including:

(a) Adoption of the Law on Prohibition of Discrimination, on 27 July 2010;

(b) Adoption of the Law on Free Legal Aid, on 6 April 2011;

(c) Adoption of the Law on the Protector of Human Rights and Freedoms, on 29 July 2011;

(d) Entry into force of the Law on Amendments to the Law on Foreigners, on 7 November 2009;

(e) Adoption of the Law on Amendments to the Law on Minority Rights and Freedoms, on 9 December 2010;

(f) Adoption of the Law on Amending the Criminal Code which sanctions hate crime and hate speech, on 30 July 2013;

(g) Adoption of the Action Plan for Resolving the Status of Displaced Persons from Former Yugoslav Republics and Internally Displaced Persons from Kosovo residing in Montenegro, on 29 October 2009;

(h) Adoption of the Strategy for Durable Solutions of Issues Regarding Displaced and Internally Displaced Persons in Montenegro, with Special Emphasis on the Konik Area for the period 2011–2015, on 28 July 2011;

(i) Adoption of the Strategy for Improving the Position of Roma and Egyptians in Montenegro (2012–2016), in March 2012;

(j) Establishment of the Council for Civil Control of Police Work;

(k) Extension, until 31 December 2014, of the deadline for "displaced" and "internally displaced" persons to apply for the status of foreigner with permanent residence in Montenegro under the Law on Amendments to the Law on Foreigners.

(4) The Committee welcomes the ratification of the following international instruments during the period under consideration:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 6 March 2009;

(b) Convention on the Rights of Persons with Disabilities, on 2 November 2009;

(c) Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 2 November 2009;

(d) International Convention for the Protection of All Persons from Enforced Disappearance, on 20 September 2011;

(e) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 24 September 2013;

(f) Convention on the Reduction of Statelessness, on 5 December 2013.

C. Concerns and recommendations

Relevant statistical data

(5) While noting the statistical data, based on the April 2011 census, provided orally by the delegation of the State party, the Committee regrets the delay in the processing of the data obtained from the census and the absence of disaggregated data it had requested previously on the socioeconomic situation and, in particular, the situation of the various ethnic minorities (art. 2).

Recalling its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates that disaggregated data on the ethnic or national origin and on the socioeconomic and cultural status of different groups are useful tools for assessing the representation of the various minority groups in public bodies and institutions that would enable the State party to enhance the equal enjoyment by all of the rights enshrined in the Convention. The Committee recommends that the State party analyse the data obtained during the 2011 census and provide the Committee with information on the ethnic composition of the population, disaggregated data on the socioeconomic situation in the State party, in particular with regard to the different ethnic groups, including persons of Roma, Ashkali and Egyptian origin.

Harmonization of national legislation with the Convention and international law

(6) While noting the primacy of international law over national legislation, the Committee is concerned that the Parliament of Montenegro has not harmonized national legislation with the Convention (art. 2).

The Committee encourages the State party to bring national legislation into line with international standards, in particular those enshrined in the Convention. The Committee requests the State party to provide it with information on cases where the Convention has been invoked directly in national courts.

Legislation prohibiting racist organizations

(7) The Committee notes the absence of legislation in the State party declaring organizations which promote and incite racial discrimination illegal (arts. 2 and 4 (b)).

The Committee recommends that the State party amend its legislation to declare organizations that promote and incite racial discrimination illegal.

Racist motivation as an aggravating circumstance

(8) The Committee is concerned that racial, national, ethnic or ethno-religious motivation is not regarded as an aggravating circumstance in determining the punishment of crimes (art. 4).

The Committee recommends that the State amend the Criminal Code to include racial, national, ethnic or ethno-religious motivation as an aggravating circumstance when determining the punishment of crimes.

Enforcement of the Law on Prohibition of Discrimination

(9) The Committee is concerned about the small number of cases of racial discrimination before the courts and about the low number of convictions in such cases. It is also concerned at information that even very serious cases of incitement to racial hatred are treated as misdemeanours and that they seldom result in convictions (arts. 2, 4, 5, 6 and 7).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:

(a) Conduct broad awareness-raising campaigns at the local and national levels on how to report cases of racial discrimination and incitement to racial hatred to the Ombudsman and other relevant authorities and how to bring them before courts;

(b) Strengthen initial and in-service training of judges, prosecutors, lawyers and police officers on how to identify and sanction racially motivated offences;

(c) Provide training to judges, prosecutors, lawyers and police officers on the provisions in criminal legislation relating to racism, equal treatment and non-discrimination and provide an evaluation of such training in the next periodic report;

(d) Ensure that criminal acts relating to racial discrimination, incitement to racial hatred and racially motivated hate crimes are prosecuted at a level commensurate with their seriousness, and expedite such cases;

(e) Establish a mechanism to recognize, record and analyse such cases and provide information on their incidence in the next periodic report.

Protector of Human Rights and Freedoms (Ombudsman)

(10) While appreciating the increase in the staff and budget for the Protector of Human Rights and Freedoms (Ombudsman) and noting that the office has already dealt with a certain number of cases of discrimination, the Committee is concerned that the Ombudsman still lacks the necessary human, technical and financial resources to fulfil his mandate, given his recent designation as the institutional mechanism for protection against

discrimination and as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel or Degrading Treatment or Punishment. It is also concerned that the Ombudsman does not have investigative powers or the authority to initiate and participate in court proceedings relating to discrimination (art. 2).

In the light of its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee requests that the State party:

(a) Provide the Ombudsman with the necessary human, technical and financial resources to fulfil the recently expanded mandate of the office;

(b) Conduct a broad campaign at the national and local levels to raise awareness about the Ombudsman's mandate and competence;

(c) Evaluate the effectiveness of the Ombudsman's activities and include the findings in the next periodic report;

(d) Consider broadening the mandate of the Ombudsman to include investigative powers and the authority to initiate and participate in judicial proceedings relating to discrimination;

(e) Encourage the Ombudsman to apply to the International Coordinating Committee of National Human Rights Institutions for accreditation as the national institution for the promotion and protection of human rights, in accordance with the Principles relating to the status of national institutions (the Paris Principles).

Stigmatization of and discrimination against persons of Roma, Ashkali and Egyptian origin

(11) The Committee is concerned at the negative attitudes, stigmatization and discrimination against people of Roma, Ashkali and Egyptian origin, in particular persons from Kosovo (arts. 2, 5 and 7).

In accordance with its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination (art. 4), No. 15 (1993) on organized violence based on ethnic origin (art. 4), No. 27 (2000) on discrimination against Roma and No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party:

(a) Organize human rights training for law enforcement officials, judges, teachers, medical staff and social workers in order to foster an awareness of tolerance, interethnic dialogue and harmony, on the basis of the Convention and relevant national legislation;

(b) Conduct information campaigns for the general public focusing on the prevention of discrimination against persons of Roma, Ashkali and Egyptian origin;

(c) Intensify efforts to end discrimination against persons of Roma, Ashkali and Egyptian origin, in particular those from Kosovo, in all spheres of public life.

Legal status of "displaced" and "internally displaced" persons

(12) While taking note of the strategies and action plans adopted by the State party to find a durable solution to the uncertain legal status of "displaced" persons (from the former Yugoslav republics) and "internally displaced" persons (from Kosovo) in Montenegro, the Committee is concerned that many such persons are at risk of becoming stateless. It is concerned that a number of "internally displaced" persons of Roma, Ashkali and Egyptian origin have difficulty obtaining certain personal documents required to apply for the status of foreigner under the Law on Amendments to the Law on Foreigners (arts. 2, 4, 5, 6 and 7).

Recalling its general recommendation No. 30 on discrimination against non-citizens, the Committee recommends that the State party:

(a) Simplify the procedure for "displaced" and "internally displaced" persons to qualify for the status of foreigner under the Law on Amendments to the Law on Foreigners;

(b) Raise the awareness of the persons concerned in a simple, accessible and well-publicized manner about the importance of registering, having proof of registration or having documents for themselves and their children;

(c) Enhance assistance to persons facing problems with the payment of administration fees and continue to organize bus visits in order to help them obtain the documents required to apply for foreigner status in Montenegro;

(d) Establish a simplified birth registration procedure and issue documents to all persons born in the territory of the State party;

(e) Devise a strategy and take administrative and judicial measures to register or retroactively register children born outside of established health institutions.

Housing situation of persons of Roma, Ashkali and Egyptian origin in the Konik camp

(13) The Committee is seriously concerned that persons of Roma, Ashkali and Egyptian origin who were "internally displaced" from Kosovo continue to live in deplorable conditions in the Konik camp near Podgorica, which is located on the site of a garbage dump and has been subject to flood and fire in the recent past. The Committee is particularly concerned that, despite the adoption of the strategy for durable solutions in 2011, the camp continues to lack basic utilities and services, such as electricity, running water and sanitation, and that the construction of housing for the inhabitants of the Konik camp has still not begun. The Committee is also concerned that the inhabitants of the camp live in de facto segregation (arts. 2, 3 and 5).

Recalling its general recommendations No. 3 (1972) on reporting by States parties, No. 27 (2000) on discrimination against Roma and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:

(a) Take urgent measures to improve the living conditions in the Konik camp and implement a sustainable strategy aimed at its prompt closure;

(b) Urgently begin building the 60 housing units for Konik residents that were announced for 2014 by the delegation of the State party, start construction of the other several hundred housing units without delay, and continue to ensure the availability of funds, including through fundraising with donors;

(c) Foster the local integration of persons of Roma, Ashkali and Egyptian origin, including the residents of Konik, in communities throughout the country and ensure that they are provided with adequate living and housing conditions, in order to avoid segregation.

Children of Roma, Ashkali and Egyptian origin in the educational system

(14) The Committee is concerned about the low rate of enrolment, low school attendance and high drop-out rate among children of Roma, Ashkali and Egyptian origin, especially after the age of 11, including for reasons of child labour, child marriage and forced marriage in the case of girls. The Committee is also concerned at the high number of Roma children living and working in the streets, which makes them vulnerable to trafficking and economic and sexual exploitation. In addition, the Committee is concerned at the lack of instruction in the Roma language and the de facto segregation of children of Roma, Ashkali

and Egyptian origin studying at the Konik branch of the Božidar Vuković Podgoričanin school (arts. 2, 3, 5 and 7).

In the light of its general recommendations No. 19 (1995) on racial segregation and apartheid and No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party:

(a) Provide free education, textbooks and transportation to children of Roma, Ashkali and Egyptian origin in order to avoid segregation, ensure their integration in local educational facilities and close the Konik branch of the Božidar Vuković Podgoričanin school;

(b) Ensure that children of Roma, Ashkali and Egyptian origin without birth registration or identity documents do not suffer discrimination in accessing education and in the school environment;

(c) Intensify efforts to increase enrolment and reduce the drop-out rate among children of Roma, Ashkali and Egyptian origin, by raising the awareness of parents about the value of continued education for their children's long-term socioeconomic wellbeing and about the adverse consequences to their health and future prospects of child labour, child marriage and forced marriage;

(d) Enhance the enrolment of children of Roma, Ashkali and Egyptian origin in kindergartens and other preschool educational facilities in order to improve their knowledge of the Montenegrin language;

(e) Increase the use of Roma teaching assistants and mediators in schools and encourage teachers to consider dedicating part of the curriculum to the Roma language;

(f) Monitor child labour, in particular in the informal and domestic sectors, and provide protection and information to children of Roma, Ashkali and Egyptian origin living in the street in order to prevent them from becoming victims of trafficking and economic and sexual exploitation.

Socioeconomic situation of persons of Roma, Ashkali and Egyptian origin

(15) The Committee is concerned at the difficult economic situation and high unemployment rate of persons of Roma, Ashkali and Egyptian origin in the State party due to their lack of qualifications and high levels of illiteracy, but also to direct and indirect discrimination. While noting that members of these minority groups are classified as "hard to employ persons" owing to their lack of qualifications and high illiteracy rate, the Committee is concerned that the members of these minority groups are also subjected to direct and indirect discrimination (art. 5).

Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party:

(a) Monitor and remedy cases of direct or indirect discrimination against persons of Roma, Ashkali and Egyptian origin and take special measures to achieve equality for them in keeping with article 5 of the Law on Prohibition of Discrimination;

(b) Strengthen efforts to increase the employability and employment of persons of Roma, Ashkali and Egyptian origin through adult literacy and vocational training programmes, and enhance affirmative action by implementing the active employment policy as well as by granting them tax exemptions, subsidies and interest-free loans;

(c) Raise awareness about the double discrimination against women of Roma, Ashkali and Egyptian origin in education, employment and health care, and take specific measures to address and overcome this form of discrimination.

Situation of asylum seekers

(16) The Committee is concerned at the delay in the opening of the reception centre for asylum seekers near Podgorica, which should have been operational by late 2011 (arts. 5 and 6).

In the light of its general recommendation No. 22 (1996) on article 5 and refugees and displaced persons, the Committee recommends that the State party:

(a) Provide asylum seekers currently living in private facilities with sufficient food and basic medical care;

(b) Complete without delay the construction of the reception centre for asylum seekers near Podgorica, taking into account current numbers, and provide it with the necessary staff and facilities to enable it to function correctly.

D. Other recommendations

Ratification of other treaties

(17) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to the Durban Declaration and Programme of Action

(18) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and take into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Amendment to article 8 of the Convention

(19) The Committee reiterates its recommendation that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Consultations with organizations of civil society

(20) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.

Dissemination

(21) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

(22) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 9, 12 and 14 (b) above.

Paragraphs of particular importance

(23) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 13, 14, 15 and 16 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

(24) The Committee recommends that the State party submit its combined fourth to sixth periodic reports, in one document, by 3 June 2017, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).

36. Poland

(1) The Committee considered the combined twentieth and twenty-first periodic reports of Poland (CERD/C/POL/20-21), submitted in one document, at its 2275th and 2276th meetings (CERD/C/SR.2275 and CERD/C/SR.2276), held on 10 and 11 February 2014. At its 2290th meeting, held on 20 February 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the combined twentieth and twenty-first periodic reports of Poland. It appreciates the regularity with which the State party submits its periodic reports, which is in line with the reporting guidelines. The Committee also appreciates the emphasis in the report on the implementation of the previous recommendations of the Committee and the timely submission of the follow-up report. The Committee appreciates the constructive dialogue held with the large delegation of the State party. It also welcomes the updated common core document of the State party.

B. Positive aspects

(3) The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities in September 2012. It also notes that the State party reported the completion in August 2013 of the internal ratification procedure regarding the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

(4) The Committee also welcomes legislative measures taken during the period under review, including:

(a) The new Foreigners Act facilitating a number of new and improved processes for residence and work permits for foreigners and establishing a system of non-custodial measures applied to foreigners in an irregular situation;

(b) The amendment of the Criminal Code in 2010 expanding the scope of hate crimes and penalizing activities such as producing, recording, purchasing, storing or transferring products whose contents promote fascist or other totalitarian State regimes, or incite national, racial or ethnic hatred;

(c) The enactment in December 2010 of the Anti-Discrimination Act implementing certain European directives on equal treatment and the adoption of the National Action Plan for Equal Treatment 2013–2016.

(5) The Committee further welcomes the following measures:

(a) The establishment in the Ministry of Justice in December 2009 of the Department of Human Rights, which is in charge of reporting to the human rights treaty bodies;

(b) The regulations established by the Minister of National Education on 1 April 2010 admitting foreigners to public schools and providing them with additional classes, including remedial and language classes;

(c) The establishment of the human rights protection team within the Ministry of the Interior and Administration in December 2011 to monitor violations of human rights.

C. Issues of concern and recommendations

Relevant statistical data

(6) The Committee regrets the absence of updated information on the ethnic composition of the population further to the 2011 national census, including relevant socioeconomic indicators to assess the equal enjoyment by all of the rights covered by the Convention (arts. 1 and 5).

While noting the relative homogeneity of the Polish population, the Committee requests that the State party provide detailed updated statistical data on the ethnic composition of the population in view of its revised reporting guidelines (CERD/C/2007/1). It requests the State party to share the findings of the post-census study on the national identity of the population. Regarding the latter, and in light of its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group (art. 1, paras. 1 and 4), the Committee underlines the utmost importance of self-identification of individuals belonging to particular racial or ethnic groups.

The Convention in domestic legislation and the courts

(7) The Committee notes that, in spite of the provision in article 91 of the Constitution of Poland that a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, there is an absence of cases of direct application of the Convention in domestic courts (art. 2).

The Committee recommends that the State party disseminate the content of the Convention as part of the training of judges and lawyers and apply the provision in the Constitution regarding the direct application of international agreements whenever appropriate.

Racial motivation

(8) The Committee takes note that article 53, paragraph 2, of the Penal Code asks courts to take into account the motivation and conduct of the perpetrator when imposing penalties.

However, the Committee is concerned that the Penal Code does not contain a provision expressly establishing racial motivation of a crime as an aggravating circumstance (art. 4).

The Committee recommends that the State party amend its criminal code, specifically making racial motivation of a crime an aggravating circumstance and allowing for enhanced punishment to combat the occurrence of such acts.

National human rights bodies

(9) While taking note that the Human Rights Defender, reaccredited in 2012 with status A, is also the national preventive mechanism and the equality body, the Committee is concerned that the resources allocated to the Human Rights Defender may not be sufficient to cover all those important mandates. The Committee is also concerned that the Human Rights Defender has no statutory mandate to consider petitions from victims of racial discrimination concerning incidents occurring in the private area. Finally, the Committee regrets the absence of information on the impact of the work of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance established in February 2013 (arts. 2 and 6).

The Committee recommends that the State party provide adequate human and financial resources to the Human Rights Defender and ensure that it deals with racial discrimination both in the public and private areas. The Committee requests the State party to provide it with information on concrete results obtained by the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance through its framework programme of action and explain how the State party enhances coordination and synergy between all national human rights bodies.

Hate discourse and crimes

(10) The Committee remains concerned by the persistence of racism and hate speech in sport. Hate speech on the Internet is still widespread and not effectively addressed. The Committee further expresses its concern about the information that at least four far-right organizations remain active in Poland despite the court decision in 2009 in Brzeg banning an organization which promoted fascism and totalitarian regimes. The Committee also notes with concern that, although in 2010 three persons were found guilty by the court in Wroclaw of launching a website promoting racial discrimination, that website is still functioning (art. 4).

Bearing in mind its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:

(a) Seek efficient means to combat racism in sport, including imposing fines on clubs for the racist acts of their supporters, and continue working with sporting associations to promote tolerance and diversity;

(b) Undertake further measures in conformity with its legislation and with article 4 of the Convention, in addition to the initiatives of the General Prosecutor, to tackle hate speech better on the Internet;

(c) Take action against websites promoting racial hatred;

(d) Ensure effective enforcement of the laws of the State party declaring illegal parties or organizations which promote or incite racial discrimination, in conformity with article 4 (b) of the Convention.

Racial discrimination in criminal justice

(11) The Committee expresses its concern at the small number of racial discrimination cases referred to the courts, despite the increase in hate crimes. It is also concerned that, when a case is finally brought to court, the penalty imposed may not sufficient to have a

deterrent effect and by the information that a number of victims of hate crimes, including victims of abuse and ethnic profiling by law enforcement officers, are unwilling to report those incidents owing to doubts about the ability and interest of law enforcement officials in providing adequate recourse (arts. 4 and 6).

The Committee recommends that the State party continue its training programmes for prosecutors, police officers and judges on racially motivated offences and the importance of dealing with them with due seriousness. In light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the State party should remind public prosecutors of the general importance of prosecuting all racist acts and imposing sanctions that are proportionate to the gravity of such acts. Finally, the Committee recommends that the State party establish an independent body to receive complaints of police violence or abuse and take the necessary measures to ensure the recruitment of persons belonging to minority groups into the police.

Situation of national and ethnic minorities

(12) Despite the efforts of the State party in promoting the rights of persons belonging to minorities, including implementation of the Act on National and Ethnic Minorities and Regional Languages, the Committee is concerned about ongoing negative stereotypes of national and ethnic minorities. The Committee is particularly concerned about racist behaviour against Roma, Jews and people of African and Asian descent. The Committee requested information on the status of the Slowincy and notes that, according to the response of the delegation of the State party, no such group as the Slowincy currently resides on the territory of Poland. (arts. 2, 4, 5 and 7).

The Committee recommends that the State party enhance its awareness-raising programmes among the general public on intercultural dialogue and tolerance and on the history and culture of ethnic and national minorities. In view of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party give serious consideration to the adoption of temporary special measures designed to secure the full and equal enjoyment of human rights and fundamental freedoms, including the faithful implementation of the provisions of the Convention, for persons belonging to minority groups. The Committee also requests that the State party provide information about the Slowincy in Poland.

Situation of the Roma community

(13) The Committee takes note of a number of results achieved through the programme for the Roma community in Poland for the period 2004–2013. However, the situation of the Roma is still worrying in terms of the high rate of school dropout, the large number of Roma children in special schools, poor living conditions, including de facto segregation in housing, threats of eviction and the limited number of Roma entering the labour market. The Committee is further concerned by the continuing negative stereotypes and discrimination regarding this community (arts. 2–7).

In light of its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party intensify its special measures to promote the economic, social and cultural rights of the Roma community, ensuring that all policies and programmes affecting them are designed, implemented, monitored and evaluated with the full participation of organizations representing them. In this regard, the State party should speed up the adoption of the new programme for the Roma community for the period 2014–2020 and ensure that concrete measures are taken to improve Roma living conditions, including access to mainstream and higher education, adequate housing, health services and employment.

Further measures should be taken to address the root causes of the poverty and marginalization of the Roma community, including any indirect discrimination they may face, and promote the rights of Roma women, often subject to double discrimination, bearing in mind general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

Situation of the Jewish community

(14) Considering the tragic experience of the Jewish community in Poland and its virtual extermination, particularly during the occupation in the Second World War, the Committee expresses concern about the continuing prevalence of anti-Semitic sentiment and incidents in Poland, despite numerous activities undertaken to counter this. It is also concerned about the information it has received regarding the attitude of certain Polish authorities who have discontinued investigations in some cases of anti-Semitism on the grounds that the victim did not belong to the Jewish community (arts. 4 and 6).

Bearing in mind the tragic experience of the Jewish community in Poland, particularly during the occupation in the Second World War, the Committee recommends that the State party intensify its efforts to combat anti-Semitism and efficiently prosecute its manifestations by sensitizing prosecutors and judges to the need to apply the law and the Convention proactively.

Discrimination against non-citizens

(15) The Committee is concerned about the continuing practice of detaining minors with their parents in guarded centres for asylum seekers, which prevents those minors from having access to an appropriate education. The Committee is further concerned about information that non-citizens, in particular migrants and refugees, face discrimination in the field of employment, that they are reportedly paid lower salaries, work longer hours without official contracts and also face discrimination in housing, as landlords are often reluctant to let a flat to foreign nationals or to sign agreements with them (arts. 5 and 6).

The Committee recommends that the State party refrain from detaining asylum-seeking minors and fully implement the revised Act on the Education System to address their educational difficulties by providing language classes or tutorial assistance in their mother tongue. In light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party remove obstacles to the enjoyment of economic, social and cultural rights by non-citizens and strengthen its efforts to apply its legislation and the Convention to combat direct or indirect racial discrimination against them, in particular with regard to education, housing and employment.

D. Other recommendations

Ratification of other treaties

(16) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular those treaties, the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to the Durban Declaration and Programme of Action

(17) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, which was

held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Consultation with organizations of civil society

(18) The Committee recommends that the State party consult and expand its dialogue with civil society organizations working in the area of the protection of human rights, in particular in combating racial discrimination, in connection with the implementation of the present concluding observations and the preparation of the next periodic report.

Dissemination

(19) The Committee commends the State party for its efforts and recommends that its reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports continue to be widely disseminated in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

(20) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the recommendations contained in paragraphs 9, 10 and 13 above within one year of the adoption of the present conclusions.

Paragraphs of particular importance

(21) The Committee also wishes to draw the attention of the State party to the particular importance of its recommendations in paragraphs 8, 14 and 15 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

(22) The Committee recommends that the State party submit its twenty-second to twenty-fourth periodic reports in a single document, due on 4 January 2018, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (see the harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para.19).

37. Sweden

(1) The Committee considered the nineteenth to twenty-first periodic reports of Sweden (CERD/C/SWE/19-21), submitted in one document, at its 2251st and 2252nd meetings (CERD/C/SR.2251 and 2252), held on 22 and 23 August 2013. At its 2261st meeting (CERD/C/SR.2261), held on 29 August 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined nineteenth to twenty-first periodic reports of the State party drafted in conformity with the Committee's reporting guidelines and addressing its previous concluding observations. The Committee also welcomes the State party's punctuality and regularity in submitting its periodic reports.

(3) The Committee thanks the large delegation of the State party for its oral presentation and responses to the Committee's questions and comments and the opportunity thus provided to engage in a constructive and continuing dialogue.

B. Positive aspects

(4) The Committee notes with appreciation a number of legislative and policy developments regarding the elimination of racial discrimination, including:

(a) The entry into force of the new Anti-Discrimination Act (2008:567) on 1 January 2009, prohibiting discrimination associated with, inter alia, ethnicity, religion or other belief and offering protection against racial discrimination;

(b) The establishment of the Equality Ombudsman (2008:568) on 1 January 2009, with the mandate to monitor compliance with the Anti-Discrimination Act and promote equal rights by, inter alia, investigating complaints of discrimination and representing complainants in settlements or courts;

(c) The adoption of the Introduction Act, which entered into force in 2010, and of the subsequent Integration Policy, with the objective of increasing newly arrived migrants' access to the labour market, promoting more effective language acquisition, improving results in schools and creating a society in which everyone feels a sense of belonging;

(d) The adoption of the Act on National Minorities and National Minority Languages (2009:724), providing for measures to promote and revitalize national minority languages and improve the availability of mother-tongue teaching;

(e) The enactment of the new Education Act (2010:800), which entered into force on 1 July 2011, stipulating the right to mother-tongue tuition in the minority languages;

(f) The amendment to the Swedish Constitution (art. 2) confirming the status of the Sami as a people and providing for the right to self-determination;

(g) The adoption in 2012 of the Strategy for Roma Inclusion 2012–2032 with the overall goal of promoting equal opportunities in life for Roma, including enhanced participation in a public life;

(h) The adoption in 2011 of the national action plan to safeguard democracy against extremism 2012–2014, aiming to counter extremism by, inter alia, distributing funds for activities that seek to prevent individuals from joining violent extremist environments or that support individuals wishing to leave such environments.

(5) The Committee welcomes the ratification, during the period under consideration, of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 15 December 2008.

C. Concerns and recommendations

Anti-Discrimination Act and its enforcement

(6) The Committee welcomes that the protection against ethnic discrimination in the Constitution and the Anti-Discrimination Act extends to both Swedish citizens and others present in the country; however, it notes that the term "race" was deleted in the new Anti-Discrimination Act and the Instrument of Government, which may lead to difficulties with the qualification and processing of complaints of racial discrimination thus hindering the access to justice for victims (arts. 1, para. 1; 2, para. 1 (d); and 7).

The Committee recommends that the State party enforce the prohibition of discrimination associated, inter alia, with ethnicity as set forth in the Constitution and

the Anti-Discrimination Act, ensuring that the new formulation of the prohibition of discrimination, which covers racial perceptions only indirectly under the term "other similar circumstances", does not diminish the protection of victims of racial discrimination, as requested by the Convention. The Committee also requests the State party to disseminate relevant information to the public, in particular to minorities, informing complainants about what constitutes discrimination and the legal remedies available to those facing racial discrimination.

Relevant statistical data

(7) The Committee welcomes detailed statistics provided by the State party on citizenship, country of birth and mother-tongue tuition, etc., and notes that the State party does not compile official statistics on ethnic origin, colour or other indicators of diversity as the Committee had previously requested it to do (art. 2).

Recalling its revised reporting guidelines (CERD/C/2007/1, paras. 10 and 12), the Committee recommends that the State party diversify its data collection activities, using various indicators of ethnic diversity on the basis of anonymity and self-identification of persons and groups, to provide an adequate empirical basis for policies to enhance the equal enjoyment by all of the rights enshrined in the Convention and facilitate the monitoring thereof. In this regard, the Committee recommends that the State party seek guidance from the study by the Equality Ombudsman on methods for determining the composition of the population in terms of relevant discrimination indicators, and living conditions of all components of society, including immigrants, foreign-born citizens and members of indigenous and minority groups, with particular reference to the fields of employment, housing, education and health.

Special measures

(8) While noting that the State party has taken steps to facilitate, inter alia, access by newly arrived immigrants to employment, and education and equal opportunities for members of national minorities, the Committee expresses concern at the State party's position that "special measures is a controversial concept and is not defined in Swedish law" and that there is not an accepted definition of the concept of special measures (CERD/C/SWE/19-21, para. 62). The Committee recalls its previous concluding observations (CERD/C/SWE/CO/18) and general recommendation No. 32 (2009) on the meaning and scope of special measures (arts. 1, para. 4, and 2, para. 2).

The Committee recommends that the State party amend its legislation (the Anti-Discrimination Act and other regulations) to provide for the possibility of adopting special measures to promote equal opportunities, address structural discrimination and enhance strategies against inequality and discrimination faced by immigrants, foreign-born citizens, indigenous and minority groups, including Afro-Swedes and Muslims, in accordance with article 1, paragraph 4, of the Convention. Such special measures may take various forms, depending on their purpose.

Equality Ombudsman

(9) While welcoming the establishment of the Equality Ombudsman on 1 January 2009, consolidating the four different ombudsmen offices, the Committee notes with concern the lack of a broad mandate for the Ombudsman that goes beyond the limits of the Anti-Discrimination Act, which does not include, for example, protection from the wrongful acts of private individuals or public officials, the Ombudsman Office's accountability towards the Government and the limitations of its independence owing to the appointment and dismissal procedures. The Committee is also concerned at the very low number of cases in which discrimination was established, despite the reported prevalence of ethnic

discrimination in the workplace, housing, access to goods and services and education (CERD/C/SWE/19-21, paras. 46–47) (art. 2, para. 2).

The Committee recommends that the State party strengthen the Equality Ombudsman by broadening its mandate to effectively protect the members of vulnerable groups from all forms of discrimination, providing it with adequate financial and human resources, and ensuring the operational and perceived independence of the Ombudsman by establishing proper appointment and dismissal procedures. The Committee requests that the State party undertake a thorough analysis of the reasons for the low number of cases in which discrimination was established by the Ombudsman and take steps to address this problem. Finally, the State party should assess the effects of the consolidation of the Ombudsman's mandate on combating discrimination.

National human rights institution

(10) The Committee welcomes the functioning of the Ombudsman's Office, but is nevertheless concerned about the absence of an independent national human rights institution in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2).

Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party also consider establishing an independent national human rights institution for the protection and promotion of human rights in conformity with the Paris Principles, and provided with adequate financial and human resources in order to efficiently fight against discrimination.

Racially motivated hate crimes

(11) The Committee takes note of the enhanced data on xenophobic and racially motivated hate crimes and welcomes the State party's efforts at the police, prosecution and justice levels to fight hate crimes by introducing, inter alia, the special hate crime investigators and on-call hate crime units. However, the Committee is concerned about the limited effectiveness of the measures against hate crimes, which are applied only in some parts of the country. It is also concerned at the reported discrepancy between increased reports to the police of hate crimes and the decrease in the number of preliminary investigations and convictions, in particular as regards "agitation" against a national or ethnic group. The Committee expresses further concern about the consideration of forms of hate speech under "agitation", which may result in a restrictive interpretation and the use of differing definitions of hate crime by individual law enforcement agencies, and the State party's information that it is not possible to track all reported hate crimes through the justice system (arts. 2, para. 1 (c) and (d); 4 (a); and 6).

The Committee recommends that the State party develop a clear strategy to ensure scrutiny of the way police and prosecutors deal with hate crimes and that it replicate measures such as hate crime units and special investigators in all parts of the country. The State party should extend to all parts of the country the training given to the police, prosecutors and judges to effectively investigate, prosecute and punish hate crimes, in order to close the gap between reported incidents and convictions. The Committee reiterates its request that the State party introduce a common and clear definition of hate crime so that it is possible to track all such reported crimes through the justice system. The State party should also follow up on the report of its special investigator on further measures to combat xenophobia and similar forms of intolerance.

Accountability for hate speech including racism in political discourse

(12) The Committee expresses its concern about the increase in reports of racially motivated hate speech against visible minorities, including Muslims, Afro-Swedes, Roma and Jews, in particular by some far-right politicians. The Committee is also concerned about the reported increase of hate speech in the media and on the Internet, including by certain media professionals. The Committee believes that additional measures need to be taken to address the issue of hate speech in the media (arts. 2, para. 1 (a); 4 (a), (b) and (c); and 7).

Recalling its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party effectively investigate, prosecute and punish all hate crimes and take effective measures to combat hate speech in the media and on the Internet, including by prosecuting the perpetrators, where appropriate, regardless of their official status. The Committee urges the State party to take the necessary measures to promote tolerance, intercultural dialogue and respect for diversity, aiming those measures at journalists, inter alios.

Racist and extremist organizations

(13) The Committee notes with concern reports that racist and extremist organizations continue to function despite the State party's position that its legislation effectively prohibits all forms of racist expression, including the operation of groups advocating racial discrimination (CERD/C/SWE/19-21, para. 120). In this regard, the Committee is concerned that the State party's legislation does not fully respond to the requirements of article 4 of the Convention, taking into account the absence of any explicit legal provisions declaring illegal and prohibiting organizations promoting and inciting racial hatred (arts. 2, para. 1 (a) and (d); and 4 (a), (b) and (c)).

Drawing attention to general recommendation No. 15 (1993) on article 4 of the Convention, the Committee reiterates its previous recommendation that the State party amend its legislation to declare illegal and prohibit organizations promoting and inciting racial hatred, in line with article 4 (b) of the Convention.

Economic segregation

(14) The Committee is concerned by reports that several metropolitan areas show a stark division in the type and areas of residence along ethnic and socioeconomic lines, which division impacts mostly on foreign-born persons, and in particular Afro-Swedes and Muslims. It is also concerned by similarly stark discrepancies along ethnic and socioeconomic lines in access to employment between native Swedes and foreign-born persons, which prevails even after a long stay by the latter in Sweden and disproportionately affects the next generation. The Committee is particularly concerned by the increased likelihood that foreign born-persons will be unemployed, occupy unskilled, low-paying jobs, or live in a de facto segregated area, the consequences of which surfaced during the May 2013 riots which started in the Stockholm suburb of Husby (arts. 3 and 5 (e) (i) and (iii)).

The Committee recommends that the State party study the causes of the 2013 riots with a view to assessing the effectiveness of its strategies against prevailing de facto segregation in Sweden along ethnic and socioeconomic lines, and the need for those strategies to be adjusted. The Committee also recommends that the State party take further legal and policy measures to address the problem of social exclusion and segregation along ethnic lines.

Integration policy

(15) The Committee welcomes the steps taken by the State party as part of its Comprehensive National Strategy for Integration 2008–2011 to increase newly arrived migrants' access to the labour market, facilitate effective language acquisition by and improve results in schools of persons of foreign origin and enhance their sense of identity within the Swedish society. However, it remains concerned that persons of foreign origin continue to suffer from de facto discrimination in employment, demonstrated by them occupying more low-income jobs and having lower employment rates. The Committee is also concerned by the limited access of immigrants to higher education and skills and their higher dropout rates from schools (arts. 2, para. 1 (c); and 5 (e) (i) and (v)).

The Committee recommends that the State party evaluate the results of the Comprehensive National Strategy for Integration with a view to addressing prevailing discrimination against persons of foreign origin throughout the country. The State party should in particular take further effective measures to increase access to education and employment by persons of foreign origin.

Racial profiling

(16) While noting that the State party's legal system requires a high level of proof in cases of the arrest and detention of a suspect, the Committee is concerned about the reported discrepancy between the number of arrests and the number of convictions under the Swedish Terrorism Act, which gives rise to concerns as regards unwarranted arrests due to racial profiling (arts. 2, para. 1 (a) and (c); 4 (c); and 6).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take measures to evaluate the effects of the application of the Terrorism Act, including on minority communities, and ensure the application of relevant guarantees to prevent possible police profiling and any discrimination in the administration of justice.

Indigenous Sami

(17) The Committee notes with concern that a bill on Sami rights was to be submitted to the Parliament in March 2010 reflecting on the outcomes of various inquiries into Sami land as well as resources rights, but the draft bill was rejected by the Sami Parliament and other interest groups during the preparatory process. The Committee also expresses its concern that the State party allows major industrial and other activities affecting Sami, including under the Swedish Mining Act, to proceed in the Sami territories without Sami communities offering their free, prior and informed consent (arts. 5 (d) (v)).

Recalling its general recommendation No. 23 (1997) on indigenous peoples and previous concluding observations, the Committee recommends that the State party take further measures to facilitate the adoption of the new legislation on Sami rights, in consultation with the concerned communities, building on the studies undertaken into Sami land and resource rights which are considered mutually acceptable. The Committee also recommends that the State party adopt legislation and take other measures to ensure respect for the right of Sami communities to offer free, prior and informed consent whenever their rights may be affected by projects, including to extract natural resources, carried out in their traditional territories.

(18) The Committee notes the problem of inadequate compensation by the State party for damages due to the killing of Sami herders' reindeer by predators protected under the Swedish wildlife policy (art. 5 (d) (v) and 6).

The Committee recommends that the State party continue its efforts to find ways to compensate the Sami reindeer-herding communities for damages caused to them by predators, based on a negotiated settlement.

(19) The Committee is concerned at the lack of progress on developing a Nordic Sami Convention and at the State party postponing ratification of International Labour Organization (ILO) Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries (art. 5 (e) (vi)).

The Committee reiterates its previous encouragement to the State party to contribute to the timely negotiation and adoption of a Nordic Sami Convention and to ratify ILO Convention No. 169.

Stigmatization and discrimination against Roma

(20) While welcoming the steps taken by the State party to prevent discrimination against Roma, including the efforts of the Ombudsman and the adoption of the Strategy for Roma Inclusion 2012–2032, the Committee is concerned about the lack of progress in the equal enjoyment of rights by Roma, in particular about the continued stigmatization of and discrimination against Roma in access to services, their ongoing precarious socioeconomic situation due to low levels of employment, inadequate enforcement of the Education Act and the Anti-Discrimination Act regarding discrimination in education, and the prevailing lack of access of Roma to adequate housing (arts. 2, paras. 1 (c) and 2; 3; and 5 (e) (i),(iii) and (v)).

In the light of its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party:

(a) Enhance its efforts to combat discrimination against Roma, including by implementing temporary special measures in accordance with general recommendation No. 32 (2009) on the meaning and scope of special measures, to improve the enjoyment of economic, social and cultural rights by Roma;

(b) Combat prejudice and stereotypes and provide redress to individuals on the basis of the Anti-Discrimination Act;

(c) Take further steps to alleviate the precarious socioeconomic situation of Roma, including by increasing their access to public and private employment through training, requalification and counselling;

(d) Ensure the effective and systematic enforcement of the Education Act;

(e) Increase access to adequate housing for Roma without discrimination and segregation, including by facilitating access to public and low-cost housing and improving the living conditions of Roma.

Access to remedies

(21) The Committee is concerned at reports that the compensation in discrimination cases is relatively low, which may deter victims of discrimination from claiming their rights instead of deterring discrimination. The Committee also notes with concern a report by the Ombudsman stating a lack of measures to encourage actors to litigate in discrimination cases (art. 6).

The Committee recommends that the State party guarantee remedies — including compensation — to the victims of discrimination, by making appropriate use of the Anti-Discrimination Act. To that end, the Committee encourages the State party to consider increasing the compensation available to victims of discrimination and to implement the measures proposed by the Ombudsman in order to provide financial assistance to individuals and associations to facilitate litigation in discrimination cases,

increase resources for the local and regional anti-discrimination offices and strengthen the legal aid system.

D. Other recommendations

Ratification of other treaties

(22) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to Durban Declaration and Programme of Action

(23) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Consultations with organizations of civil society

(24) Welcoming the broad consultations with the civil society undertaken by the State party in the context of preparation of the present report, the Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations.

Dissemination

(25) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

(26) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 14 and 16 above.

Paragraphs of particular importance

(27) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 6, 9 and 11 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(28) The Committee recommends that the State party submit its twenty-second and twenty-third periodic reports in a single document by 5 January 2017, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session

(CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).

38. Switzerland

(1) The Committee considered the combined seventh to ninth periodic reports of Switzerland, submitted in one document (CERD/C/CHE/7-9), at its 2283rd and 2284th meetings (CERD/C/SR.2283 and 2284), held on 14 and 17 February 2014. At its 2291st meeting (CERD/C/SR.2291), held on 20 February 2014, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined seventh to ninth periodic reports submitted by Switzerland, which provide detailed information on the implementation of the recommendations contained in the Committee's previous concluding observations.

(3) The Committee also welcomes the additional information provided by the delegation of the State party in response to the issues raised by the Committee during the frank and constructive dialogue.

B. Positive aspects

(4) The Committee notes with appreciation the legislative and policy developments to combat racial discrimination in the State party since its last report, including:

(a) Establishment of the Swiss Centre for Expertise in Human Rights, in 2010, as a five-year pilot project to facilitate the implementation of the State party's international human rights obligations;

(b) Launch of a four-year integration programme by the Federal Office of Migration and the cantons, in January 2014, which will lead, inter alia, to the establishment in all cantons of advisory services for victims of racial discrimination.

(5) The Committee also welcomes the ratification by the State party of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2008, and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in 2009.

C. Concerns and recommendations

Application of the Convention under domestic law

(6) The Committee reiterates its concern at the lack of effective de jure implementation of the Convention, including the lack of progress in introducing legislation at the federal level that:

(a) Contains a clear definition of direct and indirect racial discrimination, in accordance with the definition set out in article 1, paragraph 1, of the Convention;

(b) Clearly prohibits and provides adequate remedies for racial discrimination under civil and administrative law, including in areas such as employment, education and housing;

(c) Makes committing an offence with racist motivation or aim an aggravating circumstance under the Criminal Code (arts. 1, 2 and 6).

The Committee recommends that the State party:

(a) Adopt a clear and comprehensive definition of racial discrimination, including direct and indirect discrimination, covering all fields of law and public life, in accordance with article 1, paragraph 1, of the Convention;

(b) Introduce an overarching provision in its civil and administrative law prohibiting both direct and indirect racial discrimination in all areas of private and public life, and provide adequate remedies for such discrimination;

(c) Incorporate a provision in the Criminal Code to the effect that committing an offence with racist motivation or aim constitutes an aggravating circumstance allowing for more severe punishment, as set out in the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens, and take into account the Committee's general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

(7) The Committee is concerned at the restrictive interpretation of article 261 bis of the Criminal Code by the judicial authorities, noting that cases of discriminatory remarks or actions directed at people from certain regions or ethnicities are frequently dismissed on the grounds that they are not based on a particular nationality or ethnicity. It expresses further concern that, following the revision of the Criminal Procedural Code which entered into force in January 2011, under article 115 of the Code, only a person who has suffered direct harm may be a party to the proceedings, thus precluding associations and organizations from filing complaints of racial discrimination. The Committee regrets that remedies in the area of civil and administrative law are restricted to compensation only (arts. 2 and 6).

The Committee urges the State party to take effective measures, as provided for in article 6 of the Convention, to ensure that everyone within its jurisdiction enjoys effective protection and remedies through the competent national courts and other State institutions against any acts of racial discrimination which violate his or her rights, as well as the right to seek from such courts just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, including restitution. The Committee also calls on the State party to sensitize legal personnel, including the judiciary, to international norms against racial discrimination.

(8) While noting the unique system of direct democracy in the State party, the Committee expresses deep concern at the lack of sufficient safeguards to ensure that popular initiatives proposed by citizens do not contradict the obligations of the State party under the Convention (art. 2).

The Committee urges the State party to step up its efforts to introduce an effective and independent mechanism to review the compatibility of popular initiatives with the State party's obligations under international human rights law, including the Convention. The Committee also recommends that the State party urgently and systematically strengthen its efforts at all levels to widely publicize and raise awareness among the public about any conflict between a proposed initiative and the State party's international human rights obligations, as well as the ensuing consequences.

Absence of reliable data on discrimination

(9) Despite allegations of discrimination on the basis of race, colour, descent, or national or ethnic origin in various areas of public and private life, particularly in accessing housing and the labour market, and in treatment at work and at school, the Committee is concerned at the absence of reliable and comprehensive data on such incidents, including court cases. Moreover, while noting that the DoSyRa documentation and monitoring system

was established in 2008 to record cases of racism registered by the counselling services affiliated to the Counselling Network for Victims of Racism, and that the Federal Commission against Racism has been mandated to collect statistics of cases under article 261 bis of the Criminal Code, the Committee is concerned that there is no nationwide established reporting practice (arts. 2 and 6).

The Committee recommends that the State party establish an effective data collection system, using various indicators of ethnic diversity on the basis of anonymity and self-identification of persons and groups, to provide an adequate empirical basis for policies to enhance the equal enjoyment by all of the rights enshrined in the Convention and facilitate the monitoring thereof, as set out in the Committee's revised reporting guidelines (CERD/C/2007/1, paras. 10 and 12), bearing in mind the Committee's general recommendation No. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples. The Committee also urges the State party to ensure that everyone within its jurisdiction enjoys the right to effective protection and remedies against discrimination in all areas of public and private life, including in accessing housing and the labour market, and in treatment at work and at school, with adequate reparation or satisfaction for any damage suffered as a result of such discrimination, in accordance with article 6 of the Convention.

National human rights institution

(10) While welcoming the issuance of a new appointment order by the Federal Council to strengthen the independence of the Federal Commission against Racism, in May 2013, and the establishment of the Swiss Centre for Expertise in Human Rights, in 2010, the Committee reiterates its concern at the lack of a national human rights institution in accordance with the Paris Principles. It also notes that the Federal Commission against Racism has been granted "C" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (art. 2).

The Committee reiterates its previous recommendation that the State party consider establishing a national human rights institution in accordance with the Principles relating to the status of national institutions (the Paris Principles), taking into account the Committee's general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention. It also recommends that the Federal Commission against Racism be provided with adequate funding and resources to effectively and independently carry out its mandate to combat racial discrimination.

Reservations

(11) The Committee reiterates its concern at the maintenance of reservations to article 2 of the Convention regarding the right of the State party to apply its legal provisions concerning the admission of foreigners to the Swiss market, and to article 4 concerning the right of the State party to take necessary legislative measures taking due account of freedom of opinion and freedom of association (arts. 2 and 4).

The Committee reiterates its previous recommendation that the State party consider withdrawing its reservations to article 2, paragraph 1 (a), and article 4 of the Convention. Should the State party decide to maintain the reservations, the Committee requests that the State party provide, in its next periodic report, detailed information as to why the reservations are necessary, the nature and scope of the reservations, their precise effects in terms of national law and policy, and any plans to limit or withdraw the reservations within a specified time frame.

Racism and xenophobia in politics and the media

(12) The Committee is deeply concerned at racist stereotypes promoted by members of right-wing populist parties and sections of the media, in particular against people from Africa and south-eastern Europe, Muslims, Travellers, Yenish, Roma, asylum seekers and immigrants. It is also concerned at the display of political posters with racist and/or xenophobic content and of racist symbols, as well as at racist behaviour and at the lack of prosecution in such cases. The Committee is further concerned at the xenophobic tone of popular initiatives targeting non-citizens, such as the initiative "against the construction of minarets", adopted in November 2009, the initiative on the "expulsion of foreign criminals", adopted in November 2010, and the initiative "against mass immigration", adopted in February 2014. The Committee notes that such initiatives have led to a sense of unease among the affected communities and in Swiss society generally (arts. 2, 4 and 6).

The Committee recommends that the State party:

(a) Undertake extensive and systematic awareness-raising activities at all levels in the public and political spheres to combat stigmatization, generalization, stereotyping and prejudice against non-citizens, sending a clear message concerning the abhorrence of racial discrimination, which degrades the standing of individuals and groups in the estimation of society, taking into account the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens;

(b) Take appropriate measures towards ensuring that media representations of ethnic groups are based on the principles of respect, fairness and the avoidance of stereotyping, and that the media avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance;

(c) Sensitize legal personnel, including the judiciary, to international norms protecting freedom of opinion and expression and norms against racist hate speech, as set out in the Committee's general recommendation No. 35 (2013) on combating racist hate speech;

(d) Take swift measures, in addition to prosecution, to respond to instances of racist remarks or acts, including formal rejection by high-level public officials and condemnation of hateful ideas expressed, as set out in the Committee's general recommendation No. 35 (2013) on combating racist hate speech.

Naturalization

(13) While noting that the Swiss Citizenship Act is currently being revised, the Committee expresses concern at initiatives calling for stricter criteria for naturalization, including the popular initiative adopted in Bern in November 2013, which stipulates that recipients of welfare benefits cannot become naturalized citizens. While the Committee is aware that this initiative is currently being reviewed by the Parliamentary Assembly, it is concerned that the general political climate in the State party may lead to a more discriminatory system of naturalization (arts. 1 and 5).

The Committee recommends that the State party ensure that any revision of the Swiss Citizenship Act does not have a disproportionate and discriminatory impact on certain groups. It also reiterates its previous recommendation that the State party adopt uniform standards on integration for the naturalization process, in conformity with the Convention, and take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds throughout the territory of the State party, including by establishing an independent and uniform appeals procedure in all cantons.

Racial profiling and excessive use of force

(14) The Committee reiterates its previous concern at the use of racial profiling by law enforcement officials and at the lack of related statistics. It is also concerned at reports of excessive use of force during police checks, harassment of Roma and people of African origin by the police, and the lack of an independent mechanism throughout the State party to receive and investigate complaints of mistreatment by the police (arts. 2 and 5).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee calls on the State party to take effective measures to ensure that individuals are not targeted for identity checks, searches and other police operations on the grounds of race or ethnicity, and to take appropriate legal measures against law enforcement officials for unlawful conduct based on racially discriminatory grounds. It also recommends that the State party establish an independent mechanism to receive and investigate complaints concerning misconduct by police officers in each canton, and ensure that human rights training for police officers is conducted in all cantons, in accordance with general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights.

National minorities

(15) While welcoming the efforts made by the State party to guarantee the rights of national minorities, the Committee remains concerned that Traveller communities and the Yenish, Manush, Sinti and Roma continue to face obstacles in accessing education and preserving their language and lifestyle. The Committee expresses concern that those communities may face indirect discrimination as a result of seemingly neutral laws and policies, particularly with regard to land-use planning and police regulations on trading activity and regulations on the stationing of caravans. It also notes that these communities are frequently subjected to generalizations and stereotypes in the media, which can lead to stigmatization (art. 5).

The Committee recommends that the State party strengthen its efforts to promote and protect the rights of national minorities, particularly with regard to access to education and the preservation of their language and lifestyle. It calls on the State party to ensure that laws and policies which may seem neutral do not have any discriminatory impact on the rights of members of national minorities. The Committee also encourages the State party to raise awareness among the public about the history and characteristics of different national minorities, and to take appropriate and effective measures to avoid generalizations and stereotypes in the media.

Persons granted temporary admission (“F” permit)

(16) While welcoming the humanitarian basis of the provisional admission status granted to persons who have fled conflict and generalized violence and cannot return to their home countries (“F” permit), the Committee expresses deep concern at the undue hardship faced by persons who are granted such status if they remain in the State party for a long time. It notes with concern that this status is not linked with a residence permit, and imposes restrictions on “F” permit holders in most areas of their lives, which could give rise to de facto discrimination against such vulnerable non-citizens, including: (a) restrictions on freedom of movement, including from one canton to another within the State party, as well as travel abroad; (b) de facto lack of access to employment due, inter alia, to the perceived uncertainty of the provisional admission status; (c) the lengthy waiting period of three years or more for family reunification, which also requires an adequate level of income and a suitable place of accommodation; and (d) limited access to educational and training opportunities and to health care (art. 5).

The Committee urges the State party to eliminate any indirect discrimination and undue obstacles for persons granted provisional admission status to enjoy their basic human rights. In this regard, the Committee reminds the State party that differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim and are not proportional to the achievement of that aim, as set out in the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens. The Committee recommends that the State party eliminate disproportionate restrictions on the rights of provisionally admitted persons, in particular those who have been in the State party for a long time, by enabling them to move freely within the State party and by facilitating the process of family unification and access to employment, educational opportunities and health care.

Non-citizens

(17) The Committee remains concerned at the situation of asylum seekers and refugees, who are accommodated in remote reception centres with limited access to employment and training opportunities, and whose rights are at continuous risk of being further eroded. It expresses particular concern at the restriction of freedom of movement of asylum seekers in some public spaces in some municipalities. The Committee is also concerned about the situation of migrants and undocumented persons, in particular women, who are more vulnerable to poverty and violence and are at risk of multiple forms of discrimination in areas such as access to housing and employment. While welcoming the revision of the Federal Act on Foreign Nationals in July 2013, which provides for the right of victims of marital violence to remain in Switzerland, the Committee expresses concern that the level of violence must reach a certain threshold of severity for the benefits of that Act to apply (arts. 2 and 5).

The Committee calls upon the State party to take effective measures to eliminate discrimination against non-citizens, in particular migrants, undocumented persons, asylum seekers and refugees, and to ensure that any restriction on their rights is based on a legitimate aim and is proportionate to the achievement of the aim, in accordance with the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens. It also urges the State party to address the particular risks and vulnerability faced by women belonging to those groups, and to ensure that victims of marital violence can remain in the State party without undue procedural obstacles. In this regard, the Committee draws the attention of the State party to its general recommendation No. 25 (2000) on gender related dimensions of racial discrimination.

Education and training on combating racial discrimination

(18) While noting various measures taken by the State party to promote the integration of foreigners and ethnic and religious communities in the State party, the Committee expresses concern at the absence of campaigns directed at the public to combat racial discrimination throughout the State party. It also reiterates its concern at the lack of a national action plan to combat racial discrimination, as referred to in the Durban Declaration and Programme of Action (arts. 2 and 7).

The Committee reminds the State party that integration is a two-way process involving both majority and minority communities, and recommends that the State party adopt additional measures targeting the majority community to combat racial discrimination. In this regard, the Committee reiterates its previous recommendation that the State party adopt a national action plan to combat racial discrimination, and carry out information campaigns to raise awareness among the public of the manifestations and harms of racial discrimination. It also encourages the State party

to ensure that school curricula, textbooks and teaching materials are informed by and address human rights themes and seek to promote mutual respect and tolerance among nations and racial and ethnic groups.

D. Other recommendations

Ratification of other treaties

(19) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Labour Organization Convention No. 189 (2011) concerning decent work for domestic workers, the 1961 Convention on the Reduction of Statelessness and the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education.

Consultations with organizations of civil society

(20) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.

Dissemination

(21) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Common core document

(22) Noting that the State party submitted its core document in 2001, the Committee encourages it to submit an updated core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies, held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

(23) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12, 13 and 16 above.

Paragraphs of particular importance

(24) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 6, 7, and 9 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

(25) The Committee recommends that the State party submit its combined tenth to twelfth periodic reports, in one document, by 29 December 2017, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-

specific reports and 60 to 80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).

39. Uzbekistan

(1) The Committee considered the combined eighth and ninth periodic reports of Uzbekistan (CERD/C/UZB/8-9), submitted in a single document, at its 2277th and 2278th meetings, held on 11 and 12 February 2014 (see CERD/C/SR.2277 and 2278). At its 2288th and 2289th meetings, held on 19 February 2014 (see CERD/C/SR.2288 and 2289), it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined eighth and ninth periodic reports of the State party, which are in conformity with the Committee's guidelines, as well as the supplementary information and printed materials provided by the high-level delegation. The Committee also notes with appreciation the timeliness and regularity with which the State party submits its reports, allowing for a continuing and constructive dialogue.

B. Positive aspects

(3) The Committee welcomes the measures taken by the State party since the examination of the previous periodic reports in 2010, to combat racial discrimination, in particular:

(a) The adoption of a national plan of action for the implementation of the recommendations of the Committee;

(b) The conduct of the social survey "Uzbekistan is a multi-ethnic State" to determine the perception of ethnic relations by the population;

(c) The conduct of surveys to gather information about the socioeconomic status of the Luli/Roma community in the State party;

(d) Several awareness-raising activities, including activities by the International Cultural Centre, on the Convention, on human rights and to promote friendly relations between ethnic groups;

(e) The *makhalla* system of local neighbourhood self-governing organizations, which carry out activities to support vulnerable groups, as provided for in the 1993 law on citizens' self-governance bodies and subsequent amendments thereto.

(4) The Committee notes with appreciation the temporary reception on the territory of the State party of refugees from Kyrgyzstan following the outbreak of violence there in June 2010.

C. Concerns and recommendations

Definition of racial discrimination and legislation thereon

(5) The Committee regrets the conclusion reached by the State party that it would be "inappropriate" to incorporate a definition of racial discrimination in its legislation, in spite of the recommendation of the Committee to the contrary. The Committee also regrets that the State party has not taken steps for the elaboration of legislation of general application forbidding racial discrimination, in order to eliminate legislative gaps and to ensure protection against and provide remedies for acts of discrimination in all fields of public life (art. 1).

Taking into account the need for legal protection against discrimination on all the grounds set out in the Convention, the Committee reiterates its view that legislation of

general application forbidding racial discrimination is an indispensable tool for effectively combating racial discrimination and recommends that such legislation:

(a) Define racial discrimination and incorporate all the elements set out in article 1 of the Convention. The Committee underlines the importance of the inclusion of grounds such as colour, national origin and descent which are currently not prohibited by the State party's Constitution. The Committee draws the attention of the State party in particular to its general recommendation No. 29 (2002) on article 1, paragraph 1 (Descent);

(b) Prohibit direct and indirect discrimination in the enjoyment and exercise of all human rights, in conformity with article 5 of the Convention;

(c) Provide for the application of special measures, when necessary, taking into account the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention;

(d) Provide for penalties in the case of violation of the legislation as well as reparation for victims of racial discrimination, bearing in mind the Committee's general recommendation No. 26 (2000) on article 6 of the Convention;

(e) Establish remedies and redress mechanisms.

The Committee also recommends that the State party's legislation in civil proceedings involving racial discrimination provide for a shift in the burden of proof once a prima facie case of racial discrimination has been made.

The Committee encourages the State party to seek assistance from the Office of the United Nations High Commissioner for Human Rights for the implementation of the present recommendation.

Incorporation of the provisions of article 4 of the Convention

(6) The Committee is concerned that the State party's laws do not fully meet the requirements of article 4 of the Convention:

(a) They do not provide for the criminalization of the cases contemplated in article 4 (a);

(b) While the Political Parties Law of 26 December 1996 and the Non-Governmental Organizations Law of 14 April 1999 cover some aspects of article 4, they do not prohibit organizations and organized and other propaganda activities that promote and incite racial discrimination. Moreover, participation in such organizations and activities is not explicitly penalized in the State party's laws.

(7) The Committee notes with concern the lack of independence of the judiciary in the State party, due inter alia to the five-year term of judges and the requirement, under the 2008 Law on Legal Defence, for lawyers to renew their licence every three years (arts. 4 and 6).

Recalling the importance of the independence of the judiciary for the implementation of the Convention and referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee calls on the State party to introduce the principle of the irremovability of judges as a means for securing judicial independence, and to ensure the continuing training of lawyers without impeding their independence to choose and defend clients.

Ethnic relations

(8) The Committee notes with concern that tensions with neighbouring countries, including over natural resources, may strain inter-ethnic relations in the State party (art. 2).

The Committee calls upon the State party, which has experienced inter-ethnic conflicts in the past, to maintain its vigilance and to monitor continuously the impact of its relations with neighbouring countries on the evolution of ethnic relations domestically. Moreover, it encourages the State party to strengthen its efforts in all fields in order to promote a culture of inter-ethnic dialogue and understanding.

Surveys on inter-ethnic relations and racial discrimination

(9) While again commending the State party for conducting opinion polls on inter-ethnic relations and experience of racial discrimination, the Committee draws the attention of the State party to contradictions in the findings of opinion polls which may suggest a need to review survey methods. Moreover, the Committee expresses concern at the interpretation of the survey findings that no one has experienced racial discrimination in the State party, in spite of the fact that respondents to some surveys reported the incidence of ethnic animosity, hostility and discrimination (arts. 1 and 2).

The Committee finds it difficult to accept assertions that in a given society there is no racial discrimination and that there are no reasons for it. Therefore, the Committee cautions the State party against complacent attitudes regarding racial discrimination and ethnic relations among its population, and recommends that opinion polls be designed and conducted with a view to identifying also undetected manifestations of racial discrimination and that their findings be acted upon for preventive purposes.

Rights of ethnic minorities

(10) The Committee is concerned at the absence of framework legislation for the protection of the rights of ethnic minorities in the State party. The Committee is also concerned about the insufficient support given to the promotion of minority languages, including the Tajik language, and at the decrease in the number of schools providing education in minority languages. The Committee further notes with concern reports that education in minority languages at all levels, including preschool education, is not adequately supported by the State party's authorities (art. 5).

The Committee calls upon the State party to adopt framework legislation which defines the rights of persons belonging to ethnic minority groups and establishes mechanisms of dialogue, and to take measures to promote the use of their languages by those ethnic minority groups. The Committee also requests the State party to provide information in its next periodic report on:

(a) Measures taken to promote and support education in minority languages;

(b) The extent to which measures taken under the 2006 Cabinet Decision on the improvement of the system of retraining and advanced training of teachers benefit education in minority languages;

(c) The framework for guaranteeing access to education for the children of migrants, internally displaced persons and refugees.

Luli/Roma

(11) While welcoming the information that members of the Luli/Roma community in the State party are able to preserve their traditional lifestyle, the Committee is concerned that other findings of the survey undertaken by the State party on their socioeconomic status depict a marginalized and discriminatory situation: they fare below the national average in educational achievement, they are concentrated in low-paying employment and a large

majority of them are recipients of public welfare benefits. It is also concerned that their situation has not been perceived as a form of racial discrimination. The Committee is further concerned at reports of stigmatization and negative attitudes on the part of the public as well as in the portrayal of Luli/Roma in the media (arts. 2 and 5).

The Committee calls on the State party to adopt a strategy and plan of action for addressing the situation of the members of the Luli/Roma community in the areas of education and employment, and in other relevant fields, taking into account the measures enumerated in the Committee's general recommendation No. 27 (2000) on discrimination against Roma. The Committee requests that the State party include in its next periodic report information both on their access to basic services and on their actual enjoyment of economic, social and cultural rights. Furthermore, the Committee calls on the State party to take appropriate steps to combat prejudice and negative stereotypes regarding Luli/Roma.

(12) The Committee is alarmed at reports of the forced sterilization of Roma women and women defenders of human rights in the State party (art. 5).

The Committee urges the State party to investigate all allegations of forced sterilization of women, provide effective remedies to victims and prevent the future occurrence of sterilization without full and informed consent.

Meskhetian Turks

(13) The Committee regrets the lack of information on the situation of Meskhetian Turks who remain in the State party. The Committee is also concerned at reports of difficulties experienced by this group (art. 5).

The Committee calls on the State party to conduct research with a view to assessing the real situation of Meskhetian Turks on its territory and to provide such information, as well as information on any measures taken by the State in relation thereto, in its next periodic report.

Political rights

(14) While acknowledging the data and information on the enjoyment of political rights provided in the State party's report, the Committee regrets that data in respect to the various ethnic groups are not presented in a systematic manner. The Committee also notes that, in several instances, the data point to underrepresentation of members of ethnic minority groups, including larger groups such as Karakalpaks, Tatars, Kyrgyz, Kazakhs, Tajiks and Russians, in the judiciary and the public administration (art. 5).

The Committee encourages the State party to take measures aimed at increasing the political participation of persons belonging to ethnic minorities and requests that information on the representation of all sizeable ethnic groups in elected and appointed positions of the State party's institutions and administration be included in its next periodic report.

The Committee also recommends that the State party create a mechanism for systematic consultation with representatives of minority groups on all issues concerning them.

Prison population

(15) The Committee regrets that statistical data on the ethnicity of pretrial detainees and prisoners in correctional facilities were not provided in the State party's report (art. 5).

Reiterating the importance of statistical data on the ethnicity of persons held in prison or preventive detention for assessing the existence or extent of racial discrimination in the administration and functioning of the criminal justice system, the Committee

recommends that data on the ethnicity of persons in preventive detention be collected at the same time as other demographic information. The Committee requests that the State party present such data, along with statistical data on detainees held in correctional facilities, disaggregated by ethnic group, in its next periodic report. The Committee refers the State party to the factual indicators enumerated in section I of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

Economic, social and cultural rights

(16) The Committee notes the information provided by the State party on the ethnic and gender composition of the population of the State party and some data on education broken down by language and ethnic group, but regrets once again the absence of comprehensive data on the actual enjoyment of economic, social and cultural rights by persons belonging to ethnic groups in the State party (art. 5).

The Committee recommends that the State party establish a mechanism for collecting socioeconomic data on the enjoyment by members of the State party's ethnic groups, including women, of economic, social and cultural rights, such as education, employment, social security, health and housing. In this regard, the Committee refers the State party to the revised treaty-specific reporting guidelines (CERD/C/2007/1, paras. 11 and 19) and requests that the relevant data, disaggregated by sex, ethnic group and language spoken, be provided in the next periodic report.

Aral Sea ecological disaster and the Karakalpak ethnic group

(17) The Committee is concerned at the impact of the Aral Sea ecological disaster on the enjoyment of their human rights by members of ethnic groups living in the area. The Committee is concerned at the inability of some members of the Karakalpak ethnic group to maintain their culture, their livelihoods and their traditional lifestyle. Moreover, the Committee expresses concern about the decreasing use of the Karakalpak language in the Republic of Karakalpakstan (art. 5).

The Committee requests that the State party provide in its next periodic report information on measures taken to alleviate the impact of the Aral Sea ecological disaster on members of ethnic groups living in the Republic of Karakalpakstan as well as to ensure that they enjoy the same level of economic, social and cultural rights as the rest of the population. Moreover, the Committee calls upon the State party to take measures:

(a) To support members of the Karakalpak ethnic group to preserve their livelihoods and traditional lifestyle;

(b) To respect and promote the use the Karakalpak language as an official language.

Compulsory residence registration system (*propiska*)

(18) The Committee remains concerned at the disproportionate impact of the compulsory residence registration system (*propiska*) in the State party on the economic and social rights and opportunities of disadvantaged members of ethnic groups residing outside the capital city. The Committee regrets that the State party did not provide disaggregated data on residence registration applications and decisions in its report (art. 5).

The Committee once again requests that the State party include in its next periodic report statistical data on residence registration applications and decisions, disaggregated by region and ethnic origin of applicants. The Committee also requests the State party to supply information on the impact of the 2011 Law on "the list of categories of persons-citizens of the Republic of Uzbekistan to be permanently

registered in Tashkent city and the Tashkent region" on the enjoyment of rights and freedoms by disadvantaged members of ethnic groups residing outside the capital city.

Trafficking in persons

(19) The Committee is concerned about reports of continuous trafficking of women and children, both nationals and foreigners (art. 5).

The Committee recommends that the State party:

(a) Redouble its efforts to prevent, control and sanction all cases of trafficking of women and children;

(b) Ensure the adequate protection of all victims of such trafficking;

(c) Provide in the next periodic report data about perpetrators and victims, including their ethnic origin, the sanctions applied and the support given to victims.

Stateless persons

(20) The Committee is concerned about the situation of stateless persons and regrets that the State party has not taken concrete measures to facilitate their acquisition of Uzbek citizenship (art. 5).

The Committee recommends that the State party:

(a) Urgently take measures to address statelessness, including by improving the transparency of and expediting the naturalization procedure;

(b) Include in its next periodic report statistics on the acquisition of Uzbek citizenship;

(c) Supply information on the impact of the 2012 Cabinet Decision on the "procedures for permanent and temporary registration of foreign nationals and stateless persons in the city of Tashkent" and of the 2011 Cabinet Decision on "a stateless person's travel documents" on the rights of stateless persons and the reduction of statelessness;

(d) Inform the Committee of any envisaged amendments to the legislation or the procedure for granting citizenship to stateless persons.

Moreover, the Committee reiterates its invitation to the State party to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Refugees

(21) The Committee remains concerned at the absence of a legislative framework for the protection of refugees in accordance with international standards (art. 5).

The Committee calls upon the State party to ensure that the draft law on refugees conforms to international standards and to expedite its adoption as well as the development of a refugee status determination procedure. The Committee also reiterates its invitation to the State party to ratify the 1951 Convention relating to the Status of Refugees and its 1967 Optional Protocol.

Awareness of rights and access to remedies

(22) The conflicting findings of surveys conducted by the State party which, on the one hand, recorded no experience of discrimination in the enjoyment of civil rights and freedoms on the grounds of race or ethnicity and, on the other hand, reported instances of ethnic animosity and hostility in everyday life, reveal insufficient awareness among the population of the provisions of the Convention and of their rights resulting from the

prohibition of racial discrimination. Moreover, in view of the information on complaints received by the Ombudsman and the lack of court cases, the Committee is also concerned that victims of racial discrimination may not have access to effective remedies (arts. 1, 6 and 7).

The Committee calls on the State party:

(a) To continue raising awareness of the Convention, of what constitutes racial discrimination and of relevant legal provisions, through appropriate media and other means that are available and accessible to all;

(b) To review remedies available to victims of racial discrimination seeking redress and ensure that they are effective. In this regard, the Committee refers the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (sect. II, on steps to be taken to prevent racial discrimination with regard to victims of racism). The Committee also recommends that the State party expand the mandate of the Ombudsman to the receipt of complaints relating to racial discrimination, and consider establishing other non-judicial redress mechanisms which are more accessible;

(c) To provide in the next periodic report information on complaints about acts and cases of racial discrimination and on relevant decisions in penal, civil or administrative court proceedings as well as by non-judicial mechanisms, including on any compensation or satisfaction provided to victims of such acts.

National human rights institution

(23) While noting with interest the activities undertaken by the Ombudsman and the National Centre for Human Rights, the Committee reiterates its concern at the lack of a national human rights institution fully compliant with the principles relating to the status of national institutions (the Paris Principles) (General Assembly resolution 48/134, annex) and at reports that the Ombudsman has failed to accept or respond to some complaints.

The Committee reiterates the importance of establishing an independent and appropriately resourced national human rights institution compliant with the Paris Principles and recommends that the State party continue to consider all possible options for developing such an institution, including by strengthening the institution of the Ombudsman so as to conform with the Paris Principles, and take steps towards its accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

D. Other recommendations

Amendment to article 8

(24) The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly strongly urged States parties to accelerate their national ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Declaration under article 14

(25) The Committee encourages the State party to make the optional declaration provided for under article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

Ratification of other treaties

(26) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to the Durban Declaration and Programme of Action

(27) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests the State party to include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Consultation with organizations of civil society

(28) The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular on combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.

Dissemination

(29) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to the reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

(30) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 14 and 20 (a), (c) and (d) above.

Paragraphs of particular importance

(31) The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 6, 10 and 16 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

(32) The Committee recommends that the State party submit its tenth to twelfth periodic reports, in a single document, by 28 October 2018, taking into account the guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and that it address

all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (see HRI/GEN/2/Rev.6, chap. I, para. 19).

40. Venezuela (Bolivarian Republic of)

(1) The Committee on the Elimination of Racial Discrimination considered the combined nineteenth to twenty-first periodic reports of the Bolivarian Republic of Venezuela, submitted in a single document (CERD/C/VEN/19-21), at its 2241st and 2242nd meetings (CERD/C/SR.2241 and 2242), held on 15 and 16 August 2013. At its 2257th and 2258th meetings (CERD/C/SR.2257 and 2258), held on 27 and 28 August 2013, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the State party's report and its interactive dialogue with the high-level delegation of the Bolivarian Republic of Venezuela.

(3) The Committee appreciates the participation and contributions of the Venezuelan Ombudsperson during its consideration of the State party's report.

(4) The Committee also welcomes the participation and contributions of representatives of civil society during the meeting, as well as the alternative reports that were submitted.

B. Positive aspects

(5) The Committee commends the State party on the following legislative and institutional measures:

(a) The Organic Act on Indigenous Peoples and Communities (2005);

(b) The Indigenous Languages Act (2008);

(c) The Indigenous Artisans Act (2009);

(d) The Cultural Heritage of Indigenous Peoples and Communities Act (2009);

(e) The Organic Act on Racial Discrimination (2011);

(f) The establishment of the Ministry of People's Power for Indigenous Peoples (2007).

(6) The Committee welcomes the State party's implementation of its policy of social inclusion, which is based on social responsibility and justice, equality, solidarity and human rights; this has helped to reduce inequality in the State party.

(7) The Committee welcomes the social development measures, programmes and plans that include indigenous peoples and people of African descent, which have helped to combat structural racial discrimination in the State party.

(8) The Committee welcomes the progress made by the State party in the area of education and its efforts to reduce illiteracy, as a result of which it was declared an "illiteracy-free territory" by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in October 2005.

(9) The Committee welcomes the State party's initiative to conduct its fourteenth population and housing census in 2011, which included questions that gave respondents the opportunity to self-identify as indigenous persons or people of African descent. The Committee is pleased that some of the results of the census were presented during the interactive dialogue.

C. Concerns and recommendations

Statistical data and other information on census results

(10) Although during the interactive dialogue the State party provided the Committee with some of the results of the fourteenth population and housing census, the Committee remains concerned that the report did not contain recent, reliable and comprehensive statistics on the composition of the population, with disaggregated socioeconomic indicators, or information on the impact of social inclusion measures on the living conditions of indigenous peoples and persons of African descent. The Committee notes that, according to the information supplied by the State party, 62.5 per cent of revenues were allocated to social expenditure between 1999 and 2012. It regrets, however, that it has no information on what specific percentage of the budget is allocated to designing and implementing social inclusion measures for indigenous peoples and persons of African descent in the areas of education, health, social security, housing, basic services and food (art. 2).

The Committee urges the State party to take account of the results of the fourteenth population and housing census, conducted in 2011, when drawing up its inclusion policies and social development programmes and to develop indicators that will give it a clearer picture of the situation of indigenous communities and people of African descent, along with methods of measurement that will allow it to evaluate the sustainability, scope and impact of its policies. The Committee requests the State party to include such information in its next report, together with information on the percentage of its annual budget that is allocated for the implementation of programmes for indigenous communities and people of African descent.

Institutional measures

(11) The Committee notes that the National Institute against Racial Discrimination, the institution that is to be responsible for implementing the Organic Act on Racial Discrimination, has not yet been set up. In addition, it regrets that, more than four years after the adoption of the Indigenous Languages Act, the National Institute of Indigenous Languages has still not been established (art. 2, para. 1).

The Committee takes note of the State party's commitment to move forward with the drafting of regulations governing the National Institute against Racial Discrimination and with its operationalization. It therefore urges the State party to expedite the establishment of this institution and to ensure that indigenous peoples and persons of African descent are involved in the process. The Committee also urges the State party to take the necessary steps to expedite the establishment of the National Institute of Indigenous Languages. The Committee requests the State party to provide both institutions with the financial resources they need to function properly.

People of African descent

(12) The Committee appreciates the State party's efforts to take people of African descent into account in its social policies, but nevertheless finds that this population group is still at a disadvantage, including in participatory political and social bodies. The Committee is also concerned about the lack of specific indicators that could provide a clearer picture of the current situation of this population group (art. 1).

In light of the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee reiterates its request that the State party provide disaggregated data in its next periodic report on the geographical distribution and the social and economic circumstances of people of African descent, including from a gender perspective. The Committee invites the State party to consider extending constitutional recognition to people of African descent as

members of the Venezuelan population and to include them and consult them when adopting programmes to promote their rights and when drawing up public policies. The Committee strongly recommends that the State party take steps to ensure the participation of people of African descent in political and public life.

Definition of racial discrimination

(13) The Committee is concerned about the definition of racial discrimination set forth in article 10 of the Organic Act on Racial Discrimination and about the way in which the offence of racial discrimination is defined in article 37 of the Act, as these legal provisions do not contain all the elements of the definition of racial discrimination set out in the Convention (art. 1).

The Committee, bearing in mind its general recommendation No. 14 (1993) on article 1, paragraph 1, of the Convention, recommends that the State party bring the current definition of racial discrimination and the definition of the offence of racial discrimination into line with the definition contained in article 1 of the Convention. The Committee recommends that the State party introduce provisions on the establishment of responsibility in cases of racial discrimination into its criminal, civil and administrative laws.

Offence of incitement to racial hatred

(14) The Committee takes note of the legislative measures adopted to combat incitement to racial hatred, such as the provisions introduced in the Organic Act on Education and the Act on Social Responsibility in Radio, Television and Electronic Media. However, taking into consideration the offences of racial hatred and incitement to racial discrimination against indigenous persons and persons of African descent, the Committee remains concerned that there is no standard legislation under which any dissemination of ideas based on racial hatred or superiority, any incitement to racial discrimination or any racially motivated act of violence constitutes a punishable offence (art. 4).

Bearing in mind its general recommendation No. 15 (1993) on the mandatory nature of article 4 of the Convention, the Committee recommends that the State party step up its efforts to harmonize legislation on racial discrimination and urges it to pass a specific law defining the various manifestations of racial discrimination as a punishable offence, in accordance with article 4 of the Convention, and to ensure the prohibition of the dissemination of ideas based on racial superiority or racial hatred, incitement to or provocation of racial discrimination, racial violence or incitement to racial violence and participation in organizations that promote racial discrimination or incite it. The Committee also recommends that the State party ensure that racial motivation is defined as an aggravating circumstance in its criminal legislation.

Information on court cases

(15) The Committee reiterates its concern about the lack of information on cases of racial discrimination before the courts in the State party and points out that the absence of such cases does not mean that there is no racial discrimination, but may rather reveal the existence of lacunae in the justice system (arts. 5 (a) and 6).

The Committee reiterates its previous recommendation regarding the submission of disaggregated statistical information on cases involving racial discrimination and on the penalties imposed (CERD/C/VEN/CO/18, para. 16). Similarly, in the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party step up its efforts to ensure equal access to justice for all and that it widely disseminate information on the domestic remedies available for addressing acts of racial discrimination, on existing legal channels for obtaining

redress in cases of discrimination and on the procedure for submitting an individual communication as provided for in article 14 of the Convention.

The Yanomami people

(16) Despite the State party's efforts to protect the peoples of the Amazon region, the Committee is concerned about the situation of the Yanomami people, particularly in view of the presence of illegal miners and their attacks on members of the indigenous communities living in this region (arts. 5 (b) and 6).

The Committee urges the State party to increase the protection afforded to the indigenous peoples living in the Amazon region and recommends that it conduct a thorough investigation into violent attacks by illegal miners against members of the Yanomami people. The Committee urges the State party to take into account the guidelines on the protection of indigenous peoples in voluntary isolation and initial contact in the Amazon Basin, El Chaco and the Eastern Region of Paraguay, as adopted following consultations organized by the Office of the United Nations High Commissioner for Human Rights in the region of the Plurinational State of Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru and the Bolivarian Republic of Venezuela.

The Yukpa people

(17) The Committee is deeply concerned about the serious acts of violence that have taken place in the Sierra de Perijá, which have involved clashes between indigenous people and occupants of the land in this area. The Committee regrets that such violence has resulted in deaths and injuries among the Yukpa people, including the murder of Chief Sabino Romero, members of his family and other members of the Yukpa community, and that such events are the consequence of a failure to demarcate the land (arts. 5 (b) and 6).

The Committee recommends that the State party conduct a thorough investigation into acts of violence against the Yukpa people and especially into the killing of members of this community. It urges the State party to put both the perpetrators and instigators of these acts on trial. The Committee calls upon the State party to take the necessary measures to prevent such violence in this region by, inter alia, adopting mechanisms to expedite the process of demarcation of the land and territories of indigenous peoples.

Traditional indigenous justice

(18) The Committee takes note of the establishment of a special ombudsperson's office for indigenous peoples to act as an advisory body holding a nationwide mandate to safeguard and monitor the implementation of the constitutional rights and guarantees of the indigenous communities and peoples in the country. The Committee also notes that a draft bill on special indigenous courts is currently under discussion. Nevertheless, the Committee is concerned at the absence of information on respect for the traditional systems of justice of indigenous peoples and their harmonization with the national judicial system (arts. 2, 5 (a) and 6).

Taking into account its general recommendation No. 31 (2005), the Committee encourages the State party to ensure respect for, and recognition of, the traditional systems of justice of indigenous peoples, in conformity with international human rights law. It recommends that the State party ensure that the main objective of the draft bill on special indigenous courts is to regulate and harmonize the functions, powers and responsibilities of indigenous peoples' system of justice and the national justice system.

Consultation with indigenous peoples

(19) Although the State party has made efforts to ensure the participation of the indigenous peoples and has recognized, in the Organic Act on Indigenous Peoples and Communities, their right to prior consultation, the Committee is concerned about the lack of information on how this right has been implemented (art. 5 (c)).

Bearing in mind its general recommendation No. 23 (1997) on indigenous peoples, the Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous people — especially women — in all decision-making bodies, particularly in representative institutions and in public affairs, and that it take effective measures to ensure that all indigenous peoples participate at all levels of the public administration. The Committee recommends that the State party implement special measures (affirmative action), as described in the Convention and the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination.

Measures to combat structural discrimination

(20) The Committee welcomes the fact that the Organic Act on Indigenous Peoples and Communities contains provisions that could provide effective means of combating structural discrimination, such as the recognition of the right of older adults belonging to indigenous groups to receive an old-age pension or financial assistance in line with the life expectancy and particular circumstances of each indigenous people. However, the Committee regrets that it does not have more information on the practical application of this measure and whether specific criteria have been established for its implementation (art. 2, para. 2).

The Committee urges the State party to continue implementing social inclusion policies aimed at reducing inequality and poverty with a view to eliminating structural and historical discrimination of long standing in the State party. The Committee recommends that the State party take the necessary administrative measures to implement the special pension or financial assistance scheme provided for in the Organic Act on Indigenous Peoples and Communities and that it clearly define the criteria to be used in its application. The Committee also urges the State party to assess whether the above-mentioned scheme could be extended to the Afro-descendent population.

Multiple forms of discrimination

(21) The Committee welcomes the adoption of the Organic Act on the Right of All Women to a Life Free from Violence and the establishment of such bodies as the Coordinating Office for Women of African Descent and the Coordinating Office for Indigenous Women. However, the Committee remains concerned that women belonging to indigenous, Afro-Venezuelan, migrant and refugee communities continue to encounter multiple forms of discrimination and gender violence in all areas of social, political, economic and cultural life (art. 5).

The Committee recommends that the State party take into account the Committee's general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination and that it incorporate a gender perspective in all policies and strategies for combating racial discrimination, so as to address the multiple forms of discrimination that affect women. The Committee urges the State party to continue its efforts to support women victims of racial discrimination and to improve their access to justice. The Committee requests that information be provided in the State party's

next report on the progress of cases involving domestic violence and racial discrimination targeting women who are protected under the Convention.

Situation of migrants

(22) The Committee is concerned at the situation of migrants and refugees, most of whom come from Colombia or Haiti, in particular with regard to their vulnerability to such hazards as smuggling and trafficking of persons, exploitation, violence and discrimination (art. 5 (d) and (e)).

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take the necessary measures to protect migrants and their rights. The Committee invites the State party to include information in its next periodic report on the progress made with regard to the situation of migrant workers in the State party.

Denunciation of the American Convention on Human Rights

(23) The Committee is concerned at the State party's denunciation of the American Convention on Human Rights, whereby the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights will have ceased to have jurisdiction in relation to the State party as from 6 September 2013.

The Committee urges the State party to reconsider its position and to withdraw its denunciation of the American Convention on Human Rights.

D. Other recommendations

Ratification of other treaties

(24) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider acceding to the Convention relating to the Status of Refugees and to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Amendment to article 8 of the Convention

(25) The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Durban Declaration and Programme of Action

(26) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include specific information in its next periodic report on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dissemination of reports and concluding observations

(27) The Committee notes with appreciation that the State party makes its reports available to the general public as soon as they are submitted and recommends that it ensure that the Committee's concluding observations are also publicized and disseminated in the State party's official language and other commonly used languages, as appropriate.

Follow-up to concluding observations

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 11, 14 and 16 above.

Paragraphs of particular importance

(29) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 10, 15 and 17 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Preparation of the next report

(30) The Committee recommends that the State party submit its twenty-second through twenty-fourth periodic reports, combined into a single document, by 4 January 2016, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports (see the harmonized reporting guidelines in HRI/GEN/2/Rev.6, chap. I, para. 19).

IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

41. In 2012 and in 2013, Mr. Thornberry served as coordinator and Ms. January-Bardill as alternate coordinator for follow-up to the consideration of reports submitted by States parties. In 2014, Mr. Kut has been appointed as the coordinator of the follow-up procedure.

42. Terms of reference for the work of the coordinator on follow-up[4] and guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee[5] were adopted by the Committee at its sixty-sixth and sixty-eighth sessions, respectively.

43. At the 2260th meeting (eighty-third session), held on 29 August 2013, and at the 2292nd meeting (eighty-fourth session), held on 21 February 2014, Mr. Thornberry and Mr. Kut presented a report as coordinators on their activities to the Committee.

44. Since the closing of the eighty-second session, follow-up reports on the implementation of those recommendations regarding which the Committee had requested information were received from the following States parties: the Plurinational State of Bolivia (CERD/C/BOL/CO/17-20/Add.1), Cuba (CERD/C/CUB/CO/14-18/Add.1), Italy (CERD/C/LTU/CO/4-5/Add.1), Israel (CERD/C/ISR/CO/14-16/Add.1), Finland (CERD/C/FIN/CO/20-22/Add.1), the former Yugoslav Republic of Macedonia (CERD/C/MKD/CO/7/Add.1), Mexico (CERD/C/MEX/CO/16-17/Add.1), the Republic of Korea (CERD/C/KOR/CO/15-16/Add.1), Serbia (CERD/C/SRB/CO/1/Add.1), Slovenia (CERD/C/SVN/CO/6-7/Add.1), Spain (CERD/C/ESP/CO/18-20/Add.1), Thailand (CERD/C/THA/CO/1-3/Add.1), Turkmenistan (CERD/C/TKM/CO/6-7/Add.1) and the United Kingdom of Great Britain and Northern Ireland (CERD/C/GBR/CO/18-20/Add.1).

45. At its eighty-third and eighty-fourth sessions, the Committee considered the follow-up reports of the Plurinational State of Bolivia, Cuba, Finland, Israel, Italy, the Republic of Korea, Serbia, Slovenia, Spain, Turkmenistan and the United Kingdom, and continued the constructive dialogue with those States parties by transmitting comments and requesting further information.

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[4] For the terms of reference of the work of the coordinator on follow-up, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18), annex IV.

[5] For the text of the guidelines, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 18* (A/61/18), annex VI.

V. Review of the implementation of the Convention in States parties the reports of which are seriously overdue

A. Reports overdue by at least 10 years

46. The following States parties are at least 10 years late in the submission of their reports:

Sierra Leone	Fourth periodic report due since 1976
Liberia	Initial report due since 1977
Gambia	Second periodic report due since 1982
Somalia	Fifth periodic report due since 1984
Papua New Guinea	Second periodic report due since 1985
Solomon Islands	Second periodic report due since 1985
Central African Republic	Eighth periodic report due since 1986
Afghanistan	Second periodic report due since 1986
Seychelles	Sixth periodic report due since 1989
Saint Lucia	Initial report due since 1991
Malawi	Initial report due since 1997
Niger	Fifteenth periodic report due since 1998
Swaziland	Fifteenth periodic report due since 1998
Burundi	Eleventh periodic report due since 1998
Gabon	Tenth periodic report due since 1999
Haiti	Fourteenth periodic report due since 2000
Guinea	Twelfth periodic report due since 2000
Syrian Arab Republic	Sixteenth periodic report due since 2000
Holy See	Sixteenth periodic report due since 2000
Zimbabwe	Fifth periodic report due since 2000
Lesotho	Fifteenth periodic report due since 2000
Tonga	Fifteenth periodic report due since 2001
Bangladesh	Twelfth periodic report due since 2002
Eritrea	Initial report due since 2002
Belize	Initial report due since 2002
Benin	Initial report due since 2002
Equatorial Guinea	Initial report due since 2003
San Marino	Initial report due since 2003
Sri Lanka	Tenth and eleventh reports due since 2003

B. Reports overdue by at least five years

47. The following States parties are at least five years late in the submission of their reports:

Hungary	Eighteenth periodic report due since 2004
Egypt	Seventeenth and eighteenth periodic reports due since 2004
Timor-Leste	Initial report due since 2004
Trinidad and Tobago	Fifteenth and sixteenth periodic reports due since 2004
Mali	Fifteenth and sixteenth periodic reports due since 2005
Comoros	Initial report due since 2005
Uganda	Eleventh to thirteenth periodic reports due since 2005
Ghana	Eighteenth and nineteenth periodic reports due since 2006
Libya	Eighteenth and nineteenth periodic reports due since 2006
Côte d'Ivoire	Fifteenth to seventeenth periodic reports due since 2006
Bahamas	Fifteenth and sixteenth periodic reports due since 2006
Saudi Arabia	Fourth and fifth periodic reports due since 2006
Cape Verde	Thirteenth and fourteenth periodic reports due since 2006
Saint Vincent and the Grenadines	Eleventh to thirteenth periodic reports due since 2006
Lebanon	Eighteenth periodic report due since 2006
Bahrain	Eighth and ninth periodic reports due since 2007
Latvia	Sixth to eighth periodic reports due since 2007
Andorra	Initial report due since 2007
Saint Kitts and Nevis	Initial report due since 2007
United Republic of Tanzania	Seventeenth and eighteenth periodic reports due since 2007
Barbados	Seventeenth and eighteenth periodic reports due since 2007
Brazil	Eighteenth to twentieth periodic reports due since 2008
Nigeria	Nineteenth to twentieth periodic reports due since 2008
Mauritania	Eighth to tenth periodic reports due since 2008
Nepal	Seventeenth to nineteenth periodic reports due since 2008
Madagascar	Nineteenth and twentieth periodic reports due since 2008
Guyana	Fifteenth and sixteenth periodic reports due since 2008

C. Action taken by the Committee to ensure submission of reports by States parties

48. At its forty-second session, the Committee, having emphasized that the delays in reporting by States parties hampered it in monitoring implementation of the Convention,

decided that it would continue to proceed with the review of the implementation of the provisions of the Convention by States parties whose reports were overdue by five years or more. In accordance with a decision taken at its thirty-ninth session, the Committee agreed that this review would be based upon the last reports submitted by the State party concerned and their consideration by the Committee. At its forty-ninth session, the Committee further decided that States parties whose initial reports were overdue by five years or more would also be scheduled for a review of the implementation of the Convention. The Committee agreed that in the absence of an initial report, the Committee would consider all information submitted by the State party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations. In practice the Committee also considers relevant information from other sources, including from non-governmental organizations, whether it is an initial or periodic report that is seriously overdue.

49. At its 2183rd meeting (eighty-first session), the Committee reviewed the implementation of the Convention in Belize under its review procedure, in the absence of a report from the State party, and issued concluding observations which were made public at its eighty-second session.

50. At its eighty-second session, the Committee decided to postpone the scheduled review of the implementation of the Convention in Burkina Faso as the State party had submitted its report prior to that session. The Committee also decided to postpone the review scheduled in respect to Holy See in the light of a commitment received from the State party to finalize its report in the near future.

VI. Consideration of communications under article 14 of the Convention

51. Under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee on the Elimination of Racial Discrimination for consideration. A list of 54 States parties which have recognized the competence of the Committee to consider such communications can be found in annex I, section B.

52. Consideration of communications under article 14 of the Convention takes place in closed meetings (rule 88 of the Committee's rules of procedure). All documents pertaining to the work of the Committee under article 14 (submissions from the parties and other working documents of the Committee) are confidential.

53. At the time of adoption of the present report the Committee had registered, since 1984, 54 complaints concerning 12 States parties. Of those, 1 complaint was discontinued and 18 were declared inadmissible. The Committee adopted final decisions on the merits on 30 complaints and found violations of the Convention in 13 of them. Five complaints were pending consideration.

54. During its eighty-third session, on 27 August 2013, the Committee considered communication No. 47/2010 (*Moylan v. Australia*). The communication was submitted by Kenneth Moylan, of Aboriginal origin, who was born on 2 August 1948 in Australia. He claimed that, in view of the relatively lower life expectancy of Indigenous Australians, the alignment of their eligibility requirements for the Age Pension with those for the rest of the Australian population and the lack of opportunity to challenge such discriminatory legislation before national authorities amounted to violations of his rights under articles 2 (para. 2), 5 and 6 of the Convention.

55. The Committee noted that the State party had challenged the admissibility of the complaint for failing to exhaust domestic remedies, including the possibility to lodge a court claim under section 10 of the Racial Discrimination Act 1975 with respect to the effect of the Social Security Act 1991, and that, if the claim was successful, the Federal Court would have had a wide discretion to make any order it considered appropriate. The Committee further noted that the petitioner did not deny that proceedings could be commenced before the Federal Court pursuant to section 10 of the Racial Discrimination Act, but he claimed that such proceedings would involve substantial filing fees and costs if the petitioner failed and that, even in the event of a successful outcome, this would remain a success on paper, as the Federal Court had no legislative power and only the legislature can change the law. The Committee recalled that mere doubts about the effectiveness of domestic remedies, or the belief that the resort to them may incur costs, did not absolve a petitioner from pursuing them. The Committee considered that the petitioner had not advanced sufficient arguments that no avenues existed in Australia to claim that a given piece of legislation had discriminatory effects on a person based on race. Only after attempting to do so could the petitioner conclude that such a remedy was indeed ineffective or unavailable. Therefore, the Committee decided that the communication was inadmissible.

56. During its eighty-fourth session, on 7 and 18 February 2014, the Committee considered communication No. 50/2012 (*A.M.M. v. Switzerland*). The communication was submitted by A.M.M., a Somalian national who applied for asylum in Switzerland in 1997. While he was denied the refugee status on 5 January 1999, he was granted a provisional admission status by the Swiss authorities, who considered that it would not be reasonable to

deport him to Somalia in the light of the political situation in the country. The author claimed that the temporary admission status assigned to him was directly related to his origins, his nationality, his background and his personality, and that it created undue limitations and interfered in his daily life, including his freedom of movement, his access to employment, education, health, as well as in his private life. He claimed to be victim of violations of his rights under articles 1 (paras. 1–4), 2 (para. 2), 4 (c), 5 (a) (b) and (d) (i) and (iii)–(v), 6 and 7 of the Convention.

57. The Committee acknowledged the complexity of the issue, which highlighted the negative effects of the temporary admission on those who remain under this status for long periods of time and which may lead to restrictions in the enjoyment and exercise of their human rights. However, the Committee was not convinced that the facts in the case under consideration were due to racial discrimination and it concluded to the non-violation of the Convention by the State party. The Committee recommended to the State party to revise the regulations of the temporary admission status as to limit as much as possible the restrictions on the exercise of fundamental rights, in particular freedom of movement.

VII. Follow-up to individual communications

58. At its sixty-seventh session,[6] following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1), the Committee decided to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

59. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.[7] On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded in 2008 by Mr. de Gouttes with effect from the seventy-second session. Mr. Diaconu succeeded Mr. de Gouttes in 2014 with effect from the eighty-fourth session. The Rapporteur for follow-up to opinions regularly presents a report to the Committee with recommendations on further action to be taken. These recommendations, which are annexed to the Committee's annual report to the General Assembly, reflect all cases in which the Committee found violations of the Convention or otherwise provided suggestions or recommendations.

60. The table below provides an overview of follow-up replies received from States parties. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. Such categorization is not always easy. In general, replies may be considered satisfactory if they reveal willingness by the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Replies which do not address the Committee's recommendations or only relate to certain aspects of these recommendations are generally considered unsatisfactory.

61. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 30 complaints and found violations of the Convention in 13 cases. In 10 cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

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[6] See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18), annex IV, sect. I.

[7] Ibid., annex IV, sect. II.

Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	*Communication, number, author and location*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory or incomplete response*	*No follow-up response received*	*Follow-up dialogue still ongoing*
Denmark (6)	10/1997, Habassi	X (A/61/18)	X			
	16/1999, Kashif Ahmad	X (A/61/18)	X			
	34/2004, Mohammed Hassan Gelle	X (A/62/18)	X (A/62/18)			
	40/2007, Er	X (A/63/18)	X (A/63/18)			
	43/2008, Saada Mohamad Adan	X (A/66/18) 6 December 2010 28 June 2011	X partly satisfactory	X partly unsatisfactory		
	46/2009, Mahali Dawas and Yousef Shava	X 18 June 2012 29 August 2012 20 December 2013				X
Germany (1)	48/20, TBB-Turkish Union Berlin/Brandenburg	X 1 July 2013 29 August 2013				X
Netherlands (2)	1/1984, A. Yilmaz-Dogan				X (never requested by the Committee)	
	4/1991, L.K.				X (never requested by the Committee)	
Norway (1)	30/2003, The Jewish Community of Oslo	X (A/62/18)				X
Serbia and Montenegro (1)	29/2003, Dragan Durmic	X (A/62/18)				X

State party and number of cases with violation	*Communication, number, author and location*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory or incomplete response*	*No follow-up response received*	*Follow-up dialogue still ongoing*
Slovakia (2)	13/1998, Anna Koptova	X (A/61/18 A/62/18)				X
	31/2003, L.R. et al.	X (A/61/18 A/62/18)				X

Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	*Communication, number, author and location*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No follow-up response received*	*Follow-up dialogue still ongoing*
Australia (3)	6/1995, Z.U.B.S.				X (never requested by the Committee)	
	8/1996, B.M.S.				X (never requested by the Committee)	
	26/2002, Hagan	X 28 January 2004				
Denmark (4)	17/1999, B.J.				X (never requested by the Committee)	
	20/2000, M.B.				X (never requested by the Committee)	
	27/2002, Kamal Qiereshi		X			
	41/2008, Ahmed Farah Jama					X
Norway (1)	3/1991, Narrainen				X (never requested by the Committee)	
Slovakia (1)	11/1998, Miroslav Lacko				X (never requested by the Committee)	
Switzerland	50/2012, A.M.M.				X (never requested by the Committee)	

VIII. Consideration of copies of petitions, copies of reports and other information relating to trust and non-self-governing territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention

62. Under article 15 of the Convention, the Committee on the Elimination of Racial Discrimination is empowered to consider copies of petitions, reports and other information relating to trust and non-self-governing territories and to all other territories to which General Assembly resolution 1514 (XV) applies, as transmitted to it by the competent bodies of the United Nations, and to submit to the General Assembly its expressions of opinion and recommendations in this regard.

63. Accordingly, and at the request of the Committee, Mr. Kut examined the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples covering its work during 2013[8] (A/68/23) and copies of the working papers on the 16 Territories prepared by the Secretariat for the Special Committee and the Trusteeship Council, listed in document CERD/C/83/3, and presented his report at the eighty-fourth session, on 20 February 2014. The Committee noted, as it has done in the past, that it was difficult to fulfil its functions comprehensively under article 15 of the Convention owing to the fact that the copies of the reports received pursuant to paragraph 2 (b) contain only scant information directly relating to the principles and objectives of the Convention.

64. The Committee further noted that there was significant ethnic diversity in a number of the non-self-governing territories, warranting a close watch on incidents or trends which reflect racial discrimination and violation of rights guaranteed in the Convention. The Committee therefore stressed that greater efforts should be made to raise awareness concerning the principles and objectives of the Convention in non-self-governing territories. The Committee further stressed the need for States parties administering non-self-governing territories to include details on the implementation of the Convention in these territories in their periodic reports to the Committee.

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[8] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 23* (A/68/23).

IX. Action taken by the General Assembly at its sixty-eighth session

65. The Committee considered this agenda item at its eighty-fourth session. For its consideration of this item, the Committee had before it General Assembly resolution 68/151 of 18 December 2013 in which the General Assembly had, inter alia: (a) reaffirmed the paramount importance of universal adherence to and full and effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly on 21 December 1965, in addressing the scourges of racism and racial discrimination and (b) expressed grave concern that universal ratification of the Convention has not yet been reached, despite commitments under the Durban Declaration and Programme of Action, and calls upon those States that have not done so to accede to the Convention as a matter of urgency.

X. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference

66. The Committee considered the question of follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference at its eighty-third and eighty-fourth sessions.

67. Mr. Murillo Martínez participated in the twelfth session of the Working Group of Experts on People of African Descent.

68. Ms. Dah participated in the fifth session of the Ad Hoc Committee on Complementary Standards.

XI. Thematic discussions and general recommendations

69. Following the General Assembly resolution 64/169 of 18 December 2009, proclaiming the year beginning on 1 January 2011 the International Year for People of African Descent, the Committee at its seventy-eighth session held a thematic discussion on the subject of racial discrimination against people of African descent. Participants of the thematic discussion included representatives from States parties to the Convention; international organizations including UNESCO, UNHCR and the Economic Commission for Latin America and the Caribbean; and non-governmental organizations. Summary records of the thematic discussion can be found in documents CERD/C/SR.2080 and 2081.[9]

70. At the same session, the Committee decided to embark upon the task of drafting a new general recommendation on racial discrimination against people of African descent, in the light of the difficulties in the realization of the rights of people of African descent observed during the examination of reports and as part of the activities of the Committee to contribute to the International Year of People of African Descent. At its seventy-ninth session, the Committee adopted general recommendation No. 34 (2011) on racial discrimination against people of African descent.

71. At its eighty-first session, the Committee held a thematic discussion on racist hate speech. Participants of the discussion included, in addition to members of the Committee, representatives from permanent missions to the United Nations Office in Geneva, national human rights institutions, non-governmental organizations, academics and interested individuals. Summary records of the thematic discussion can be found in documents CERD/C/SR.2196 and 2197.

72. The thematic discussion aimed to enhance understanding of the causes and consequences of racist hate speech and how the resources in the Convention may be mobilized to combat it, through an exchange of information and experience and an examination of progress made, challenges that remain and lessons learned.

73. The Committee appointed Mr. Diaconu and Mr. Thornberry as Rapporteurs of the thematic discussion.

74. The Committee, at subsequent sessions, systematized and studied the information obtained and decided to elaborate a general recommendation on the subject of racist hate speech based on its understanding of article 4 and related articles in the Convention. At its eighty-fourth session, the Committee adopted general recommendation No. 35 (2013) on combating racist hate speech (annex VIII).

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[9] An informal summary prepared by the Secretariat can be found on the OHCHR webpage at www2.ohchr.org/english/bodies/cerd/AfricanDescent.htm.

XII. Working methods of the Committee

75. The working methods of the Committee are based on its rules of procedure, adopted in accordance with article 10 of the International Convention on the Elimination of All Forms of Racial Discrimination, as amended,[10] and the Committee's established practice, as recorded in its relevant working papers and guidelines.[11]

76. At its seventy-sixth session, the Committee discussed its working methods and the need to improve its dialogue with States parties. The Committee decided that, instead of sending list of questions before the session, the Country Rapporteur would send to the State party concerned a short list of themes with a view to guiding and focusing the dialogue between the State party's delegation and the Committee during the consideration of the State party's report. Such a list of themes does not require written replies.

77. At its seventy-seventh session, on 3 August 2010, the Committee held an informal meeting with representatives of non-governmental organizations to discuss ways and means of strengthening cooperation. The Committee decided to hold informal meetings with non-governmental organizations at the beginning of each week of its sessions when States parties' reports are being discussed.

78. At its eighty-first session the Committee initiated the practice of highlighting the focus of the recommendations in particular by using headings in its concluding observations. At its eighty-second session, the Committee further discussed it working methods and, more specifically, issues related to the modalities of the constructive dialogue with the States parties when considering their reports. The Committee decided to allow 30 minutes for the opening statement of the respective heads of delegation.

79. At its eighty-fourth, on 18 February 2014, the Committee held its fourth informal meeting with States parties, which was attended by 62 States parties. At the meeting, the Committee sought to update States parties on its methods of work, improve dialogue between the Committee and States parties and promote the engagement of States parties with the Committee throughout the reporting cycle.

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[10] Compilation of rules of procedure adopted by human rights treaty bodies (HRI/GEN/3/Rev.3).

[11] This includes in particular the overview of the methods of work of the Committee (*Official Records of the General Assembly, Fifty-first Session, Supplement No. 18* (A/51/18), chap. IX); the working paper on working methods (*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 18* (A/58/18), annex IV); the terms of reference for the work of the coordinator on follow-up to the Committee's observations and recommendations (*Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18), annex IV); and the guidelines for the Committee's early warning and urgent action procedure (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 18* (A/62/18), annex III).

XIII. Discussions on the treaty body strengthening process

80. At its eighty-first session, the Committee considered the item related to the treaty body strengthening process.

81. The Committee welcomed the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies (A/66/860), published in June 2012, and expressed appreciation for the efforts of the High Commissioner in this regard. The Committee indicated that the report identifies a comprehensive range of recommendations aimed at strengthening the treaty body system, based on a thorough three-year-long consultation process. The Committee believes that efforts to strengthen the treaty body system, including through adequate resourcing, are necessary for the ongoing support of the system, to build on its past achievements and to ensure that the rights enshrined in the treaties are enjoyed globally. In this regard, the Committee adopted a statement.

82. At its eighty-first session, the Committee discussed the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines) and adopted a decision in this regard.

83. At its eighty-fourth session, the Committee welcomed the adoption of General Assembly resolution 68/268 on the intergovernmental process on strengthening and enhancing the effective functioning of the human rights treaty body system, and congratulated the United Nations High Commissioner for Human Rights and Ibrahim Salama, Director of the Human Rights Treaties Division, for their efforts in ensuring a successful outcome for the process. The Committee decided to devote appropriate time to a detailed discussion of the resolution, including its implication for its working methods, at its eighty-fifth session in August 2014.

Annexes

Annex I

Status of the Convention

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (176) as at 21 February 2014[a]

Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Hungary, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (55) as at 21 February 2014

Algeria, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, San Marino, Senegal, Serbia, Slovakia, Slovenia,

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[a] The following States have signed but not ratified the Convention: Bhutan, Nauru and Sao Tome and Principe.

South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Uruguay and Venezuela (Bolivarian Republic of).

C. States parties that have accepted the amendments to article 8, paragraph 6, of the Convention adopted at the Fourteenth Meeting of States Parties[a] (45) as at 21 February 2014

Australia, Bahamas, Bahrain, Belize, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Guinea, Holy See, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Jamaica, Liberia, Liechtenstein, Luxembourg, Mexico, Morocco, Netherlands (for the Kingdom in Europe and the Netherlands Antilles and Aruba), New Zealand, Norway, Poland, Republic of Korea, Saudi Arabia, Seychelles, Slovakia, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

Annex II

Agendas of the eighty-third and eighty-fourth sessions

A. Agenda of the eighty-third session (12–30 August 2013)

1. Adoption of the agenda.
2. Organizational and other matters.
3. Prevention of racial discrimination, including early warning measures and urgent action procedures.
4. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
5. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
6. Consideration of communications under article 14 of the Convention.
7. Follow-up procedure.
8. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference.
9. Universal periodic review procedure of the Human Rights Council.
10. Consideration of copies of petitions, copies of reports and other information relating to trust and non-self-governing territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention.

B. Agenda of the eighty-fourth session (3–21 February 2014)

1. Solemn declaration by the newly elected members of the Committee under rule 14 of the rules of procedure.
2. Election of officers, according to rule 15 of the rules of procedures.
3. Adoption of the agenda.
4. Organizational and other matters.
5. Prevention of racial discrimination, including early warning measures and urgent action procedures.
6. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
7. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
8. Consideration of communications under article 14 of the Convention.
9. Follow-up procedure.
10. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference.
11. Universal periodic review procedure of the Human Rights Council.
12. Report of the Committee to the General Assembly at its sixty-ninth session.

Annex III

Decision of the Committee under article 14 of the Convention adopted at the eighty-third session

concerning

Communication No. 47/2010*

Submitted by:	Kenneth Moylan (represented by counsel, Alison Ewart)
Alleged victim:	The petitioner
State party:	Australia
Date of communication:	19 April 2010 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 27 August 2013,

Having concluded its consideration of communication No. 47/2010, submitted to the Committee on the Elimination of Racial Discrimination by Kenneth Moylan under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into account all information made available to it by the petitioner of the communication, its counsel and the State party,

Adopts the following:

Decision on admissibility

1. The petitioner of the communication dated 17 December 2009, completed by a letter dated 19 April 2010, is Kenneth Moylan, of Aboriginal origin, who was born on 2 August 1948 in Australia. He claims to be a victim of violations by Australia of his rights under articles 2 (para. 2), 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. The petitioner is represented by counsel.[1]

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* The following members of the Committee participated in the examination of the present communication: Mr. Nourredine Amir, Mr. Alexei S. Avtonomov, Mr. José Francisco Cali Tzay, Ms. Anastasia Crickley, Ms. Fatimata-Binta Victoire Dah, Mr. Régis de Gouttes, Mr. Ion Diaconu, Mr. Kokou Mawuena Ika Kana (Dieudonné) Ewomsan, Mr. Yong'an Huang, Ms. Patricia Nozipho January-Bardill, Mr. Anwar Kemal, Mr. Dilip Lahiri, Mr. Jose A. Lindgren Alves, Mr. Pastor Elías Murillo Martínez, Mr. Waliakoye Saidou and Mr. Carlos Manuel Vázquez.

[1] Australia made a declaration under article 14 of the Convention on 28 January 1993.

Factual background

2.1 The petitioner is an Aboriginal Australian man. He states that he has worked since he was 14 years old and wished to retire at the age of 60, in August 2008. He has no savings and only a small amount of superannuation. Accordingly, he would depend on social security provision in order to be able to retire. The qualification for the Age Pension under the Social Security Act 1991 is between 65 and 67 years of age for Australian males, depending on the year in which they were born. As the petitioner was born on 2 August 1948, he would reach pensionable age under the Social Security Act when he turns 65 years of age.

2.2 In 2007, the Australian Bureau of Statistics reported that Aboriginal men have a life expectancy of 59 years. This life expectancy is approximately 17 years lower than non-Aboriginal Australian males.[2] Despite this lower life expectancy, the qualifying age is the same for all Australian men. The requirements of the Social Security Act do not apply equitably to Aboriginal men and other Australians because Aboriginals do not live as long as other Australians.

2.3 According to the petitioner, the Government of Australia has made it clear that it has no intention of altering the eligibility requirements for the Age Pension for Aboriginal Australians. In April 2008, the petitioner wrote to the Minister for Families, Housing, Community Services and Indigenous Affairs, who replied that there were no plans to introduce a lower age for qualifying for the Age Pension for indigenous Australians, as it was important that the same rules for the Age Pension were applied to all Australians, which promoted equity in the social security system. The letter adds that assistance is available to people who need it before they reach pension age. Depending on an individual's circumstances, they may qualify for the Newstart Allowance if seeking work; the Disability Support Pension if unable to work due to permanent impairment; or Carer Payment if providing constant care for a person who needs care permanently or for an extended period.[3]

2.4 After consulting a lawyer on the matter in October 2009, the petitioner received confirmation that no domestic remedy existed to challenge this situation.[4] Indeed, in its memorandum of advice, counsel mentioned that there were potentially two avenues for the petitioner: a claim under the Racial Discrimination Act 1975 and a claim under the Australian Human Rights Commission Act 1986. With regard to the first avenue, section 10 of the Racial Discrimination Act enables a person to claim his/her right before a court if, because of the operation and effect of a law, he/she does not enjoy a right to the same extent as others on the basis of race.[5] Counsel mentioned that if a person wishes to claim that a law of the Commonwealth (namely the Social Security Act) denies Aboriginal men the same rights as non-Aboriginal men, then proceedings must be commenced in the Federal Court. However, there are substantial filing fees for commencing such a proceeding. There is also a risk of substantial costs if an applicant fails in his case. Even in the event that proceedings were initiated, the Court could argue that there is no denial of right to social security and that section 10 of the Racial Discrimination Act does not operate with respect to provisions of Commonwealth law which may have an indirect effect on a person's right. Counsel expressed doubts as to whether section 10 of the Act extended to the concept of indirect race discrimination. Any success would be a success on paper as the Court would not have the competence to order that the Social Security Act be amended.

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[2] Australia, Australian Bureau of Statistics, *Older Aboriginal and Torres Strait Islander People: A Snapshot, 2004-05* (2007).

[3] Letter from the Office of Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 25 June 2008.

[4] The petitioner was provided with written advice from a barrister at law (letter dated 9 October 2009 annexed to the petitioner's initial submission).

[5] Racial Discrimination Act 1975, section 10: Rights to equality before the law:

"(1) If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.

2.5 As for the second avenue, the same counsel advised that, under the Australian Human Rights Commission Act, a person may lodge a complaint to the Australian Human Rights Commission if he/she believes that there has been a breach of human rights. However, under such legislation, a complaint can only be made on this basis in relation to an act or practice (it is not specifically mentioned that this extends to complaints in relation to legislation). Furthermore, the Government would be free to disregard the findings of the Human Rights Commission even if it was to find a breach of human rights. Counsel recalled that the Human Rights Committee had determined that, owing to their lack of binding power, bodies such as the Australian Human Rights Commission did not offer an effective remedy.[6]

The complaint

3.1 The petitioner claims that Australia has violated his rights under articles 5 and 6 of the Convention by applying legislation that has discriminatory effects on Australians of Aboriginal origin and not giving him the opportunity to challenge such legislation before national authorities.

3.2 The petitioner refers to general comment No. 19 (2007) of the Committee on Economic, Social and Cultural Rights on the right to social security, where it is stated that differences in the average life expectancy of men and women can also lead directly or indirectly to discrimination in provision of benefits (particularly in the case of pensions) and thus need to be taken into account in the design of the scheme.[7]

3.3 Despite the general prohibition of discrimination in relation to the provision of social security, a State can and should take into account special circumstances relating to disadvantaged groups when determining eligibility criteria. In certain conditions, States

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(2) A reference in subsection (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention.

(3) Where a law contains a provision that:

(a) authorizes property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or

(b) prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander; not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which subsection (1) applies and a reference in that subsection to a right includes a reference to a right of a person to manage property owned by the person."

[6] Human Rights Committee, communication No. 900/1999, *C. v. Australia*, Views adopted on 28 October 2002, para. 7.3.

[7] *Official Records of the Economic and Social Council, 2008, Supplement No. 2* (E/2008/22), annex VII, para. 32.

parties are in fact obliged to take such special measures under article 2, paragraph 2, of the Convention. If they do not, indirect discrimination will result, as has been the case here.

3.4 The petitioner contends that domestic remedies to contest the mere existence of domestic legislation are not available in Australia. The High Court of Australia (constitutional court) does not have jurisdiction to hear complaints alleging that Australian legislation breaches international law. Moreover, it does not have jurisdiction to hear complaints about breaches of human rights owing to the lack of a bill/charter of rights. Neither the Racial Discrimination Act nor any other act would enable the Court to amend the Social Security Act. As for the Australian Human Rights Commission, it offers no remedy owing to its power to make recommendations only, which are thus non-binding.

State party's observations on admissibility and merits

4.1 On 16 December 2011, the State party submitted its observations on admissibility and merits where it noted that it was working to close the gap between indigenous and non-indigenous Australians in key health, education and employment outcomes, including life expectancy. The State party had adopted the Council of Australian Governments National Indigenous Reform Agreement and Closing the Gap targets to address the disadvantage experienced by indigenous Australians. The State party added that it took seriously the implementation of these initiatives, including by requiring that the Government of Australia report annually to the Parliament thereon and establishing the new National Congress of Australia's First Peoples. It acknowledges the historical injustices experienced by indigenous Australians. In February 2008, the Parliament formally apologized to the indigenous peoples of Australia for past mistreatment and injustices.

4.2 The State party notes that, in addition to allegations under article 5 (equality before the law in the enjoyment of the right to social security) and article 6 (effective protection and remedies), the petitioner alleges that the State party breached article 2, paragraph 2, of the Convention by failing to take the special measures necessary to achieve the goal of substantial equality in the provision of social security to indigenous Australians.

4.3 Whilst acknowledging the significant difference in life expectancy between indigenous and non-indigenous Australians, the State party notes a number of inaccuracies in the petitioner's communication which relate to both the statistics provided and the way in which those statistics have been interpreted. In particular, the petitioner states that Aboriginal men have a life expectancy 17 years lower than non-Aboriginal Australian men, relying on data from 2004–2005. However, in 2009, the Australian Bureau of Statistics published revised life expectancy estimates using 2005–2007 as reference period, indicating that the difference was 11.5 years between indigenous and non-indigenous Australians.

4.4 The communication is inadmissible for failing to exhaust domestic remedies and for non-substantiation. With regard to the first ground, the petitioner had a number of domestic remedies available to him. First, he could have made a court claim under section 10 of the Racial Discrimination Act 1975 (which implements the Convention in Australian domestic law) with respect to the effect of the Social Security Act 1991, which governs the Age Pension. Section 10 of the Racial Discrimination Act is concerned with the operation and effect of laws. It can also be extended to a law which indirectly affects the enjoyment of a human right by people of a particular race.[8] To make successful a complaint under section 10, the petitioner would have been required to demonstrate that because of the Social Security Act, Aboriginal people do not enjoy a right or enjoy a right to a more limited extent than people of other races.[9] If the claim was successful, the Federal Court would have had a wide discretion under section 23 of the Federal Court of Australia Act 1976 to make any order it considered appropriate. For instance, the Court could have read down the relevant provisions in a way which allowed both section 10 of the Racial Discrimination Act and the Social Security Act to have effect.

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[8] The State party refers to the judgement in *Bropho v. Western Australia* (2008), Full Federal Court of Australia, 100, paras. 287–290.

4.5 The State party adds that the petitioner also failed to take the remedy of applying for alternative types of social security, such as the Disability Support Pension and Special Benefit, for which he may be eligible. Had he made an application in this regard, the petitioner would have been in a position to challenge decisions made in relation to his claim through a number of avenues. For instance, certain decisions by government officials on social security matters can be subjected to internal review within the relevant government agency, merits review by the Security Appeals Tribunal and the Administrative Appeals Tribunal, and judicial review by the Federal Court and High Court of Australia.

4.6 With regard to the avenues explored by the petitioner which led to the conclusion that no domestic remedies existed (see para. 2.4 above), the State party replies that writing letters to ministers and seeking legal advice are not sufficient to consider that the petitioner exhausted domestic remedies. The Committee has expressed the view that it is incumbent upon the petitioner to pursue the available remedies and that mere doubts about the effectiveness of such remedies do not absolve a petitioner from pursuing them.[10] It is for a domestic court not for a legal counsel to decide on the avenues available under domestic legislation. The communication contains no evidence that such avenues were explored.

4.7 The State party further considers that the petitioner has not substantiated his claims based on statistical evidence and his personal circumstances. The petitioner was 61 years old at the time of submission of his communication to the Committee. According to figures from the Australian Bureau of Statistics, 60-year-old indigenous males have an average life expectancy of another 17 years approximately (compared to 22 years for non-indigenous males). The petitioner is not the victim of any violation relating to the Age Pension because, based on the statistical information of the State party, it is likely that he will reach a sufficient age to qualify for and enjoy the Age Pension in the coming years.

4.8 In addition, there is no evidence to substantiate the petitioner's claims regarding his state of health and his assumption that he would not be eligible for other types of social security. The State party also considers that the petitioner has failed to articulate how specific special measures could be required under article 2, paragraph 2, of the Convention. While he asserts that indirect discrimination can result from a failure to take special measures, he does not provide any evidence or reasoning to support his allegation.

4.9 On the merits, the State party refers to the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention,[11] where it has stated that special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. The measures should be designed and implemented on the basis of need and grounded in a realistic appraisal of the current situation of the individuals and communities concerned. The State is currently taking a wide range of measures to address differences in life expectancy between indigenous and non-indigenous Australians. For the past two decades, there have been improvements in important aspects of health, for example, in circulatory disease mortality rates, child and infant mortality rates and smoking rates. Indigenous all-cause mortality rates declined and the gap between indigenous and non-indigenous Australians has narrowed. It is for the State party to determine the form that any special measures under the Convention should take and no specific form of special measures can be required by the Convention. In this regard, differentiated social security is not the appropriate mechanism to accelerate the move towards substantive equality in health and mortality outcomes between indigenous and non-indigenous Australians. Rather, improving health outcomes, such as mortality, in the context of long-standing indigenous disadvantage, will require long-term sustainable improvements across a range of aspects of peoples' lives.

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[9] *Sahak v. Minister for Immigration and Multicultural Affairs* (2002), Full Federal Court of Australia, 215, para. 35.

[10] Communication No. 9/1997, *D.S. v. Sweden*, decision of inadmissibility adopted on 17 August 1998, para. 6.4.

[11] *Official Records of the General Assembly, Supplement No. 18* (A/64/18), annex VIII.

4.10 With regard to article 5 (e) (iv), the enjoyment of Age Pension, as distinct from social security more generally, is not required to fulfil the obligations under the Convention. The State party considers that, in any event, Australian social security law, including with respect to the Age Pension, is not discriminatory under international law as the measures are general and therefore do not differentiate directly or indirectly on the basis of race. In the alternative, to the extent that there could be said to be any indirect differential treatment between indigenous and non-indigenous Australians, it is legitimate differential treatment and not discriminatory under international law.

4.11 The right to the non-discriminatory enjoyment of social security does not require States to accord everyone social security, or to accord everyone every type of social security. Given that article 5 (e) (iv) requires the equal and not the universal enjoyment of social security, the State party is entitled to set criteria to determine when social security should be available, in order to target those most in need. The percentage of indigenous Australians who receive social security is representative of the proportion of indigenous people in Australia. The petitioner may be eligible for a number of types of social security, including the Disability Support Pension, Newstart Allowance and the Special Benefit, a social security income support payment for people who are in financial hardship through circumstances beyond their control and who have no other means of support.

4.12 Eligibility criteria under the Social Security Act are based on a range of objective criteria other than race, including age and, for those persons born before 1957 only, sex. The Age Pension provisions apply equally to all Australians and any limitations on the petitioner's ability to access that scheme do not arise by reason of his race. Rather, they arise from the fact that he has not yet reached the eligibility age for the Age Pension. Therefore, the petitioner is treated in the same way as all Australians, without distinction as to his race.

4.13 According to the Australian Bureau of Statistics, indigenous Australians represent 2.5 per cent of the total population. According to the Productivity Commission's 2010 *Indigenous Expenditure Report*,[12] around 2.8 per cent of the population receiving social security payments in 2008 and 2009 self-identified as indigenous, which shows that social security laws do not have the effect of nullifying the enjoyment of the right to social security by indigenous Australians, or the author, on an equal footing with other Australians. Moreover, the Bureau estimates that indigenous Australians represent 0.6 per cent of the population aged 65 and above and, according to the Productivity Commission, they represent 0.9 per cent of Age Pension and Wife Pension (Age) recipients in 2008 and 2009.

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[12] Australia, Indigenous Expenditure Report Steering Committee, *2010 Indigenous Expenditure Report* (Canberra, 2010, Productivity Commission).

4.14 Diseases which most frequently cause the lower life expectancy of indigenous Australians (in 2004–2008, circulatory disease, cancer, injury and poisoning, endocrine, metabolic and nutritional disorders, and respiratory disease) are of such a nature that the people who suffer from them are likely to benefit from other types of social security than the Age Pension, such as the Disability Support Pension, provided that the relevant income and other requirements are met.

4.15 To the extent that there is differential treatment (based on age), the aim of such differentiation is legitimate, reasonable, objective and proportionate. In particular, its purpose is to support older Australians who have made, through their work, a valuable contribution to Australian society. Moreover, it enables the State party to ensure that older persons have an adequate level of financial support while also requiring individuals to draw on their own financial resources, where they exist, and to productively manage resources to ensure that the pension system remains affordable and sustainable for all Australians.

4.16 As for article 6 of the Convention, without prejudice to the State party's submission that the petitioner's claim in this regard is inadmissible, it is also without merits. Article 6 is accessory in nature and applies consequently to a violation of a specific article of the Convention. Where no substantive right is violated, there can be no claim under article 6. In the light of the above assertion, the State party considers the petitioner's claim under that provision to be without merit. In the alternative, it considers that effective remedies are available in Australia as a range of review and appeal mechanisms were available to the petitioner which he declined to use (see paras. 4.4–4.6 above).

Petitioner's comments on the State party's observations on admissibility and merits

5.1 On 6 November 2012, the petitioner replied that the statistics produced by the Australian Bureau of Statistics indicating a drastically lower life expectancy of indigenous Australians demonstrate that, in effect, indigenous Australians, the petitioner included, do not enjoy the right to social security in their old age as the rest of the population does.

5.2 The petitioner contests the State party's argument that statistics from 2009 prevail over statistics from 2007. The methodology used for the 2009 Bureau statistics, as relied upon by the State party, has been challenged by a number of key organizations, including the Close the Gap Campaign Steering Committee, which counts among its members the Australian Human Rights Commission, Oxfam Australia, the Australian Medical Association, the Australian Indigenous Doctor's Association and Australians for Native Title and Reconciliation.[13] Furthermore, the Bureau has itself warned against comparing earlier statistics relating to life expectancy with later statistics, explaining that differences should not be interpreted as measuring changes in indigenous life expectancy over time.[14] Even accepting the 2009 Bureau statistics, an important gap in life expectancy amounting to 11 and a half years is still evident. The petitioner therefore considers that his arguments with regard to unequal treatment between indigenous and non-indigenous Australians remain valid.

5.3 The petitioner stresses that both sets of statistics relate to life expectancy at birth, meaning that the number of years indicated is the expected length of time that a male boy born in either 2004–2005 (2007 Bureau statistics) or 2005–2007 (2009 Bureau statistics) can be expected to live. Therefore, either reference period is not entirely accurate for the petitioner, who was born in 1948.

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[13] The petitioner refers to the report of Close the Gap Campaign Steering Committee, *Shadow Report 2012* (2012). Available from http://resources.oxfam.org.au/pages/view.php?ref=687 (accessed on 1 October 2013).

[14] Australia, Australian Bureau of Statistics, "The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples", cat. No. 4704.0 (2010).

5.4 In its observations, the State party states that, according to Bureau figures, 60-year-old indigenous males have an average life expectancy of another 17 years approximately (compared to 22 years for non-indigenous males). The State party does not provide any reference for this assertion nor could any be found, and as such the accuracy or otherwise of this statement is difficult to challenge. However, the 2009 Bureau statistics relied upon by the State party indicate that a 50-year-old indigenous man can expect to live a further 23.8 years compared to 31 years for a non-indigenous male and a 65-year-old indigenous man can expect to live a further 13.4 years compared to 17.9 years for a non-indigenous male. During the period covered by those statistics (2005–2007), the petitioner was between 57 and 59 years old, i.e., covered by the figures referred to above. The gap is therefore sufficient to indicate a significant difference in the potential enjoyment of the Age Pension between indigenous and non-indigenous Australians.

5.5 Although the petitioner acknowledges that some positive steps have been taken by the State party to reduce the gap, there is considerable debate about whether these measures have contributed to any significant improvements.[15] Furthermore, efforts made today cannot address a legacy of decades of ill-treatment that older indigenous Australians have experienced.

5.6 With regard to the admissibility, the petitioner refers to paragraph 5 of the Human Rights Committee's general comment No. 33 (2008) on obligations of States parties under the Optional Protocol to the International Covenant on Civil And Political Rights, where it has considered that it is incumbent to the State party to specify the available and effective remedies that the author of a communication has failed to exhaust. In the present case, the State party has mentioned that the Court could have interpreted the relevant provisions in a way which allowed both section 10 of the Racial Discrimination Act 1975 and the Social Security Act to have effect. The petitioner considers, however, that this would have been impossible due to the obligatory requirements of the Social Security Act, because that law mandates that a person be 65 years (or up to 67 years, depending on the year of birth) in order to be eligible for the Age Pension, and there is no discretion for a Court to interpret such provision, even in the unlikely event that a court would adopt a broad view of section 10 of the Racial Discrimination Act so as to make a finding on discrimination. As already stated in his original complaint, the Court has no legislative role and no power to rewrite Commonwealth laws. The Court could not make an order that would change the qualifications for entitlement to an age pension. Unless and until the legislature amended the Social Security Act, the petitioner would not receive an effective remedy.

5.7 In relation to why alternative types of social security were not available to the petitioner, the latter submits that social security provided during the older years of a person's life is different to that provided to, for example, those who are unemployed but actively looking for work (Newstart Allowance) or those experiencing extreme financial hardship (Special Benefit). To be supported in his old age, the petitioner should not have to satisfy the tests for these other forms of social security, but should rather be entitled to equal enjoyment of the Age Pension. In addition, contrary to the State party's assertions, the petitioner could not have sought a remedy before the Social Security Appeals Tribunal, then a review by the Administrative Appeals Tribunal and then judicial review. The Tribunal cannot take action in relation to changing the law or rewriting it as long as the law has been correctly applied. If one wants to change the law, he/she has to direct his/her request to the relevant Member of Parliament.[16] Furthermore, individuals can only apply to the Tribunal in the event that an incorrect decision was made; or where facts leading to a decision were incorrectly misinterpreted; or if all the information was not taken into account to make the decision, or if a discretionary decision was taken against an individual against his/her own interests. None of the above relate to the petitioner's case. Rather, any decision to refuse to grant the Age Pension to the petitioner would not have been discretionary but mandated by the prescriptive provisions of the Social Security Act.

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[15] The petitioner refers to the report of Close the Gap Campaign Steering Committee, *Close the Gap Shadow Report 2012*.

5.8 With regard to State party's arguments on non-substantiation, the petitioner replies that they relate to the merits. In this regard, he refers to the Committee's general recommendation No. 32, where it has stated that to treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same. The Committee has also observed that the application of the principle of non-discrimination requires that the characteristics of groups be taken into consideration.[17] In contrast to the Committee's reasoning, the State party has adopted a strict interpretation of the concept of discrimination, thereby ignoring the recognition given by the Committee and others (including the European Court of Human Rights) of the concept of indirect discrimination. The drastically lower life expectancy of indigenous Australians means that they are in a situation which is objectively different from the rest of the population.

5.9 With regard to special measures, in line with the Committee's position in general recommendation No. 32 (para. 18), the European Court of Human Rights has found that in certain circumstances, a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[18] The petitioner adds that article 2, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination aims at the achievement of equal enjoyment of human rights and fundamental freedoms and not merely de jure equality. Taking steps to address this indirect discrimination would not constitute universal enjoyment as mentioned by the State party, but merely provide for equal enjoyment as required under the Convention.

5.10 Contrary to its assertion, the State party's choice to set the age requirement at 65 years old seems to be arbitrary and not suitable for all, given the substantial differences between indigenous and non-indigenous Australians. The State party does not provide any information on the criteria it has used to set the retirement age at 65. In the light of the State party's express recognition of the difference in life expectancies, the petitioner does not see why the State party has set the age requirement at 65 for all Australians, when it is recognized that indigenous Australians are in a different situation.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a), of the Convention, whether or not the communication is admissible.

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[16] The petitioner refers to the guidelines on line of the Social Security Appeals Tribunal at http://www.ssat.gov.au/centrelink-reviews/decisions.aspx#cannotdo.

[17] General recommendation No. 32, para. 8.

[18] European Court of Human Rights, *D.H. and Others v. Czech Republic*, Grand Chamber, application No. 57325/00, 13 November 2007, para. 127.

6.2 Firstly, the Committee wishes to recall that, contrary to the State party's general statement that article 6 would be accessory in nature (see para. 4.16 above), the rights in the Convention are not confined to article 5. In this regard, the Committee refers to its jurisprudence, where it has found a separate violation of article 6 in various instances.[19]

6.3 The Committee notes that the State party has challenged the admissibility of the complaint for failing to exhaust domestic remedies. The State party argues that the petitioner had a number of domestic remedies available to him, including the possibility to lodge a court claim under section 10 of the Racial Discrimination Act 1975 with respect to the effect of the Social Security Act 1991, and that, if the claim was successful, the Federal Court would have had a wide discretion under section 23 of the Federal Court of Australia Act 1976 to make any order it considered appropriate, such as reading down the relevant provisions in a way which allowed both section 10 of the Racial Discrimination Act and the Social Security Act to have effect. The Committee notes that the State party bases its argument on the jurisprudence of the Federal Court itself (see para. 4.4 above).

6.4 The Committee notes that the petitioner does not deny that proceedings could be commenced before the Federal Court pursuant to section 10 of the Racial Discrimination Act. He claims, however, that such proceedings would involve substantial filing fees and costs if the petitioner failed and that, even in the event of a successful outcome, this would remain a success on paper as the Federal Court has no legislative power and only the legislature can change the law.

6.5 The Committee recalls that mere doubts about the effectiveness of domestic remedies, or the belief that the resort to them may incur costs, do not absolve a petitioner from pursuing them.[20] In the light of the information before it, the Committee considers that the petitioner has not advanced sufficient arguments that no avenues exist in Australia to claim that a given piece of legislation has discriminatory effects on a person based on race. Notwithstanding the reservations that the petitioner may have on the effectiveness of the mechanism under section 10 of the Racial Discrimination Act in his particular case, it was incumbent upon him to pursue the remedies available, including a complaint before the High Court. Only after attempting to do so could the petitioner conclude that such a remedy was indeed ineffective or unavailable.

6.6 In the light of the above and without prejudice to the question of the merits regarding the alleged structural discrimination related to pension entitlements, the Committee considers that the petitioner has failed to meet the requirements of article 14, paragraph 7 (a), of the Convention.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and the petitioner.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

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[19] Communication No. 10/1997, *Habassi v. Denmark*, opinion adopted on 17 March 1999, para. 10; communication No. 16/1999, *Ahmad v. Denmark*, opinion adopted on 13 March 2000, para. 8; and communication No. 29/2003, *Durmic v. Serbia and Montenegro*, opinion adopted on 6 March 2006, para. 10.

[20] Communication No. 9/1997, *D.S v. Sweden*, Inadmissibility Decision of 17 August 1998, para. 6.4.

Opinion of the Committee under article 14 of the Convention adopted at the eighty-fourth session

Communication No. 50/2012*

Submitted by:	A.M.M. (not represented by counsel)
Alleged victim:	The petitioner
State party:	Switzerland
Date of communication:	8 January 2012 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 18 February 2014,

Having concluded its consideration of communication No. 50/2012, submitted to the Committee on the Elimination of Racial Discrimination by A.M.M. under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into account all information made available to it by the petitioner, his counsel and the State party,

Adopts the following:

Opinion

1. The author of the communication dated 8 January 2012 is A.M.M., a Somali national born in Mogadishu on 10 December 1968. He claims to be a victim of violations by Switzerland of articles 1 (paras. 1–4), 2 (para. 2), 4 (subpara. (c)), 5 (subparas. (a), (b) and (d) (i) and (iii) to (v)), 6 and 7 of the Convention.[1] The petitioner is not represented by counsel.

The facts as submitted by the petitioner

2.1 In 1996, having completed his studies at the Military and Civil Academy in Tripoli and unsuccessfully applied for a residence permit in Libya, the petitioner boarded a plane to return to Somalia via Zurich, Switzerland. Fearing persecution by the majority clans in his country of origin, (he felt threatened because he had been sent to Libya by the former Somali government), the petitioner applied for asylum in Switzerland while in transit in Zurich. In response to his asylum application dated 11 August 1997, the petitioner was granted temporary admission on 5 January 1999 by the Federal Office for Refugees (later succeeded by the Federal Office for Migration). The Office considered that the petitioner did not meet the criteria for refugee status as he had not "personally suffered persecution". Even so, having considered the whole file and in view of the political situation in Somalia at the time of the application, the Office for Refugees did not find it reasonable to send him back. Since then, the petitioner has had an "F" permit, which gives him temporary admission status.

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* The following members of the Committee participated in the examination of the communication: Mr. Nourredine Amir; Mr. Alexei S. Avtonomov; Mr. Marc Bossuyt; Mr. José Francisco Cali Tzay; Ms. Anastasia Crickley; Ms. Fatimata-Binta Victoire Dah; Mr. Ion Diaconu; Ms. Afiwa-Kindena Hohoueto; Mr. Yong'an Huang; Mr. Anwar Kemal; Mr. Melhem Khalaf; Mr. Gun Kut; Mr. Dilip Lahiri; Mr. Pastor Elias Murillo Martínez; Mr. Carlos Manuel Vázquez and Mr. Yeung Kam John Yeung Sik Yuen.

[1] Switzerland ratified the Convention on 29 November 1994 and made a declaration under article 14 on 19 June 2003.

2.2 Since 5 January 1999, the petitioner has received a monthly allowance of 387.50 Swiss francs (CHF), which he considers insufficient to meet his needs.[2]

2.3 Apart from a period between 2 May 2000 and 30 September 2002, the petitioner has never managed to find work in Switzerland, despite his Libyan university education and his efforts to improve his qualifications.[3] The contract he signed with his employer in 2000 referred to him as a house boy (*garçon de maison*), although the job consisted in working in a hotel reception and acting as interpreter, mainly for Arab guests. He was paid CHF 1,700 gross per month. After a year, the petitioner told his employer that he could not continue under those conditions. He was told that as a holder of an "F" permit he could not be hired as a receptionist, as positions of that kind were reserved for holders of a residence permit. The employer therefore put in the contract that he was a porter (*tournant de loge*). As this did not suit him, the employer offered him night work so that he could keep up his German classes during the day. The contract referred to him as a night receptionist, part-time and hourly paid. He therefore had no job security. The Federal Office for Migration took 10 per cent of his pay and placed it in a special account.

2.4 To boost his chances of finding more stable employment, the petitioner took steps to obtain vocational training and university education. In 2001 he asked the unemployment benefit office to pay for training in hotel work and said he would be prepared to pay back his unemployment benefit as soon as he could. His application, dated 30 November 2001, was turned down by the Regional Employment Office on the grounds that, although such training would improve his qualifications, it was not necessary in order to find a job as he was already working in the hotel business. By a ruling of 18 June 2003, the Administrative Tribunal of the Canton of Vaud upheld that decision. By a ruling of 2 September 2004, the Federal Insurance Court upheld the cantonal tribunal's decision on the grounds that, with his qualifications, the petitioner should be able to find work in Switzerland and did not need that training to do so.

2.5 One of the many job applications submitted by the petitioner was to the Federal Office for Migration in October 2007 for a post as a translator and minute-taker. As he spoke Somali, Arabic and French, he thought his CV would be of interest. He had an interview and a written test, doing very well in both. An official of the Office informed him that he could not be hired: the Federal Government had refused to take him on the grounds that a person with an "F" permit could not be hired for that position.

2.6 Finally, in order to obtain work in river boats on the Rhine at Basel, the petitioner contacted the Basel cantonal job-training service, with positive results. However, his request to the Federal Office for Migration to move canton was turned down on 21 September 2005.

2.7 The petitioner also states that, despite the entry into force of the new Foreign Nationals Act on 1 January 2008, "F" permit holders still have to seek the approval of the migration services in order to be able to work. He was informed of this requirement on 12 January 2011.

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[2] This sum is paid by the Migrant Reception Office of the Canton of Vaud if the beneficiary is not in gainful employment. That Office also provides accommodation and pays for health insurance.

[3] The author attended a training course in Germany in 2005 and returned to Switzerland in 2006.

2.8 The petitioner wished to renew his maritime navigation certificate in other countries (he could not renew it in Switzerland). For that to be possible, the authorities of the State party would need to issue a certificate of temporary admission or a residence permit recognized by neighbouring States. The petitioner was unable to obtain an official letter from the Swiss authorities and was therefore unable to renew his certificate.

2.9 Access to university education is also *very circumscribed* for "F" permit holders. He made several attempts to register at the University of Lausanne but was unsuccessful even though he considered that he met the conditions required. Holders of an "F" permit must have three years' work experience (see University Board Guidelines on requirements for matriculation 2011/12) and, if his internships between 2002 and 2005 were taken into account (he says that Swiss law counts internships as work experience), he would have the required three years. The petitioner refers to an e-mail between the University and the Office for Scholarships of the Canton of Vaud stating that the only reason for rejecting him was the "F" permit. On the other hand, the petitioner did manage to register at the University of Geneva and asked to move from the canton of Vaud to the canton of Geneva. On 9 July 2008 the Federal Office for Migration told him that it was denying his request.

2.10 Despite having lived in Switzerland since 1999, tried many times to find work, and while waiting for work taken internships and attempted to obtain training, the petitioner has still not been given anything other than an "F" permit. In 2001, when he was working full-time in insecure, unfair conditions and asked the Swiss authorities for a residence and work permit ("B" permit), the reply was negative on the grounds that a person needed to have lived in Switzerland for a long time to get one. The letter did not say how long. An acquaintance of the petitioner's who had made a similar application had received a letter informing him of the required period of residence. It was from that person that the petitioner learned that he could apply after five years' residence in Switzerland. He therefore waited the requisite length of time and submitted an application for a permit. On 8 February 2003 he received a letter informing him that his application had been dismissed (*non-entrée en matière*). He requested an official letter so as to be able to appeal to the courts. After several months' wait, he received a letter setting out the grounds on 6 June 2003. His application had been dismissed on the basis of articles 4, 10 (para. 1 (d)), and 16 of the Federal Act on the Residence and Permanent Settlement of Foreign Nationals; and article 13 (f) of the Ordinance Limiting the Number of Foreign Nationals. In a decision of 28 August 2004, the Population Service of the Canton of Vaud also referred to articles 4 and 16, paragraph 1, of the Federal Act on the Residence and Permanent Settlement of Foreign Nationals, and cited a ruling by the Federal Supreme Court (judgement of 21 February 1996, *Ngangu M*), to the effect that federal law could not order a foreign national to be given the right to a residence permit, since that would be incompatible with article 4 of the Federal Act on the Residence and Permanent Settlement of Foreign Nationals.

2.11 In terms of access to health, in January 2008 the petitioner attempted to see a dentist but was unable to obtain the necessary treatment in time because the Migrant Reception Office of the Canton of Vaud did not issue a payment guarantee, an essential document in all dealings with the medical sector that have financial implications.

2.12 Turning to interference by the authorities in his private life, the petitioner claims that officials of the Migrant Reception Office of the Canton of Vaud have entered his home on many occasions since July 2009, opened his letterbox and looked at his correspondence, even going so far as to break open the letterbox when they could not find the key. In addition the petitioner has had several letters asking him to attend courses where he would be taught "Swiss life and customs", for example, or "Living in an apartment", even though he had already been in Switzerland for many years.[4] When he objected to this request, which he considered to be disrespectful to his origins and his sociocultural identity and background, the equivalent of two days' benefit was withheld from his monthly welfare payment. In addition, between 6 June 2001 and 29 June 2004 the petitioner made several requests to leave the country to visit his sick mother in Ethiopia, to no avail.

2.13 On 6 December 2006 the petitioner lodged a complaint with the Federal Commission against Racism in respect of the refusal to issue a residence permit and the discriminatory effects of the "F" permit on the petitioner. On 27 December 2006 the Commission replied that it did not deal with matters relating to residence status at the individual level. It forwarded his complaint to the Federal Commission on Refugees, which on 22 January 2007 rejected it on the grounds that only the cantonal authorities were competent to issue residence permits and to determine whether there had been an error of judgement in a particular case. On 8 September 2009 the petitioner contacted the mediator of the Evangelical Reformed Church of the Canton of Vaud on the same subject and on 3 October 2011 he wrote to the Federal Department of Justice and Police asking them to approach the Federal Office for Migration. These actions came to nothing.

2.14 The petitioner also appealed to the national courts. One of his applications, regarding his request for an identity certificate incorporating a return entry visa, submitted on 1 February 2008 to the Federal Administrative Court, was rejected on 19 February 2008.

2.15 On 26 August 2010, the petitioner lodged a complaint against persons unknown for, among other things, damage to property, after his letterbox was broken into, and on 3 and 17 January 2011 against the Migrant Reception Office of the Canton of Vaud. He accused members of staff of that Office of violation of his privacy insofar as they had wanted to come into his home to obtain technical data, of registering him on courses, of failing to grant his request for a change of social worker and of failing to give him a timely reply in respect of dental treatment. In an order of 2 May 2011, the district prosecutor of Lausanne dismissed the complaint on the grounds that the allegations against the Migrant Reception Office did not amount to a criminal offence and that the complaint for damage to property was time-barred. The prosecutor also rejected his application for legal aid and for free legal counsel.

2.16 On 19 May 2011 the petitioner appealed against the prosecutor's order in the Criminal Appeals Chamber of the Vaud Cantonal Court. In his appeal he complained of invasion of privacy by the Migrant Reception Office, obstruction of access to health and obstruction of career development. He claimed that these actions and abuse of authority were the result of racial discrimination and explicitly cited article 261 of the Swiss Criminal Code, and the Convention.[5] In a ruling of 27 May 2011 the Cantonal Court upheld the prosecutor's order on the grounds that the complaint for damage to property was time-barred and that the other matters did not relate to criminal offences, given the powers of action and decision legally vested in the Migrant Reception Office. In particular, the Court found that, under the Cantonal Act on Assistance to Asylum Seekers and Other Categories of Foreign Nationals of 7 March 2006, the Migrant Reception Office was required to ensure that the use to which the premises it made available, were put complied with the law on land use and construction, and also with the decision on accommodation, and that, to that end, it was authorized to carry out checks; moreover, unannounced visits to premises were allowed.

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[4] The course is compulsory for all holders of an "F" (temporary admission) permit, whether newly arrived or not.

[5] In his appeal, the author states: "These actions and abuse of authority are the result of racial discrimination. The fact that I hold an 'F' permit, which itself derives from my national origin and my reasons for being in Switzerland, puts me in a category to which the law on racial discrimination and respect for privacy and private life appear not to apply."

2.17 On 8 August 2011 the petitioner brought a criminal appeal in the Federal Supreme Court, repeating his complaints against the Migrant Reception Office and claiming racial discrimination in his access to fundamental rights. He sought effective proceedings and a thorough investigation, a finding of violation of his fundamental rights and compensation for moral and physical damage in the amount of CHF 2,000. On 18 August 2011 the Federal Supreme Court found the appeal inadmissible as insufficiently substantiated. Among other things the Court found that, according to the law, the appeal had to be substantiated on the merits, with the appellant required to state briefly in what respect the contested decision violated the law; that the Cantonal Court had found that the Migrant Reception Office had acted in accordance with its mandate insofar as the law authorized it to carry out checks and make unannounced visits to premises; that the applicant had provided no arguments on that ground; that the petitioner had cited provisions granting particular rights to persons with refugee status; that those provisions (like those of the International Convention on the Elimination of All Forms of Racial Discrimination, which the petitioner had not cited at the cantonal level) were without relevance to the application of criminal law; and that the petitioner could avail himself of administrative remedies to contest the decisions taken against him.

The complaint

3. In the petitioner's view, the State party authorities categorize persons seeking refugee status with reference to their background, their political and religious beliefs, their intellectual ability and any future plans they may have. The decisions and attitudes of the authorities with power to control his access to the labour market, medical treatment and training, to interfere in his private life and even to discredit him with any other body, are directly related to his origins, his integrity, his background and his personality. The petitioner deplores the fact that his treatment is not the same as the treatment given to the rest of the population, and also that, notwithstanding his many complaints to various institutions, there has been no enquiry into the action taken against him by the authorities. The petitioner therefore argues that the authorities' behaviour towards him constitutes a violation by the State party of articles 1 (para. 1), 2 (para. 2), 4 (subpara. (c)), 5 (subparas. (a), (b) and (d) (i) and (iii) to (v)), 6 and 7 of the Convention.

State party's observations on admissibility and merits

4.1 On 31 August 2012, the State party submitted its observations on the admissibility and merits of the communication. It states that the petitioner applied for asylum in Switzerland on 11 August 1997. The application was rejected by the Federal Office for Refugees on the grounds that the petitioner did not meet the definition of refugee under article 3 of the Federal Asylum Act. The Federal Office for Refugees found that the principle of non-refoulement did not apply in his case and that there was no reason to believe that he ran any risk if he returned to his country. Nevertheless, following a review of all the circumstances, it was felt that it would not be reasonable to enforce the decision to return him to Somalia or a third State. On 5 January 1999, therefore, the Federal Office for Refugees granted him temporary admission. The petitioner appealed the decision and the appeal was turned down on 18 February 1999 by the Swiss Asylum Appeals Commission (later replaced by the Federal Administrative Court).

4.2 Temporary admission is not a residence permit but an alternative measure to expulsion. The rights and obligations of persons admitted on a temporary basis are governed by the legal provisions relating to foreign nationals and the relevant ordinances. Since 1 January 2008 persons admitted on a temporary basis have had access to the labour market.[6] Temporary admission and the granting and extension of temporary admission status fall under the competence of the canton of residence. Labour market access, welfare, restrictions on the choice of medical care providers, and housing are administered by the competent cantonal authority.

4.3 In the canton of Vaud, where the petitioner lives, persons with temporary admission status are treated as asylum seekers (Cantonal Act on Assistance to Asylum Seekers and Other Categories of Foreign Nationals, art. 3). Subsequent issue of a residence permit is governed by the provisions of the Foreign Nationals Act. The conversion of temporary admission to residence permit falls under cantonal jurisdiction and depends on various criteria of integration — e.g., length of stay, social integration and financial independence — and the individual's family situation. An application for a residence permit may be submitted by a foreign national admitted on a temporary basis who has been resident in Switzerland for at least five years.

Admissibility

4.4 Referring to article 1, paragraph 2, of the Convention, the State party recalls that its authorities may treat their own nationals and non-nationals differently, provided that this distinction is not discriminatory in purpose, on grounds of race, colour, descent or national or ethnic origin, and does not entail such consequences. The petitioner's claims are based solely on his status under the law on foreign nationals and not on his origin or his Somali nationality. The regulations challenged here do not apply only to Somali nationals or a specific group of persons within the meaning of article 1 of the Convention.

4.5 The question of whether, given the restrictions associated with temporary admission status (notably where longer stays are concerned), the status of persons admitted on a temporary basis to Switzerland may entail their exclusion to the extent that they can be defined as a group protected by the prohibition of discrimination was considered in a study in 2003 by the Institute of Public Law of the University of Berne, at the request of the Federal Commission against Racism.[7] According to this study, a group defined by residence status is not one of those protected by the prohibition on discrimination. Temporary admission is a legal status. No particular link with the individuals concerned and their personal situation, such as that required to demonstrate discrimination, is inherent in this legal status. The report nevertheless acknowledges that a series of restrictions in essential areas of life may entail exclusion for those affected but that that exclusion does not constitute discrimination, even indirect discrimination.

4.6 As regards exhaustion of domestic remedies, the State party points out that anyone may allege a violation of article 8, paragraph 2, of the Swiss Constitution, prohibiting racial discrimination, in the Swiss courts. The petitioner did not do this, and yet he could have done, since this is a public law remedy open to anyone who claims discrimination on grounds of membership of a group protected by that provision of the Constitution. A violation of fundamental rights guaranteed under the Constitution or an international convention may also be taken up in the civil or criminal law remedies available at the cantonal and federal levels. In Swiss law, an alleged conflict between the application of domestic law and human rights guarantees under the Constitution or a convention may in principle always be raised by means of the remedies provided to challenge the particular decisions taken.

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[6] See article 85, paragraph 6, of the Foreign Nationals Act, whereby the cantonal authorities may grant temporarily admitted persons a work permit irrespective of the job market or the general economic situation.

[7] R. Kiener and A. Rieder, *Temporary admission from the standpoint of fundamental rights*, Berne, Federal Commission against Racism, 2003.

4.7 The petitioner took various proceedings through various channels. Two of them went to the Federal Supreme Court: the one regarding the conversion of his temporary admission to a residence permit (Federal Administrative Court ruling of 14 May 2007), and the one regarding his criminal case against the Migrant Reception Office of the Canton of Vaud, which the Federal Administrative Court ruled inadmissible on 18 August 2011. In the first appeal, the petitioner certainly cited one or more reports by the Federal Commission against Racism but did not allege a violation of the Convention. In any case, the requirement under rule 91 (f) of the Committee's rules of procedure, for any communication to be submitted to the Committee within six months of exhaustion of domestic remedies, was not met.

4.8 As regards the various restrictions surrounding temporary admission, there too the petitioner has failed to exhaust domestic remedies. He alleged a violation of his right to privacy and inadequate access to medical care. These complaints were raised in the Federal Supreme Court as arguments against the dismissal of the petitioner's criminal complaint against the Vaud Migrant Reception Office. In its decision of 18 August 2011, the Court nevertheless found the appeal inadmissible as insufficiently substantiated under article 42, paragraph 2, of the Act on the Federal Supreme Court, as the petitioner presented no arguments regarding the grounds for rejection at the cantonal level. The cantonal decision had found that the criminal complaint was time-barred and that the Migrant Reception Office had acted in accordance with its mandate in carrying out checks and unannounced visits to premises. In respect of the complaint of racial discrimination, the Federal Supreme Court found that it had not been raised at the cantonal level and the Court was therefore not entitled to consider the application of the Convention, as it had not been invoked in the manner required by the law. The State party points out that the Cantonal Act on Assistance to Asylum Seekers and Other Categories of Foreign Nationals clearly sets out the remedies available against decisions by the Migrant Reception Office.[8] Yet the petitioner did not challenge the Centre's decisions with regard to housing, medical treatment or welfare using the remedies described in the Act. He challenged only one welfare payment.

4.9 As regards his admission to the University of Lausanne, the petitioner did not appeal the decision not to admit him. As to access to employment, there was nothing to prevent the petitioner from looking for work and being hired. With regard to the denial of authorization to travel to visit his sick mother in 2008, the appeal lodged by the petitioner was taken off the Federal Administrative Court register on 5 March 2008 when the appeal was withdrawn. In any case that appeal does not appear to contain any reference to racial discrimination. Here again the six-month deadline for submitting a communication to the Committee was not observed. In 2010 the conditions governing travel documents for foreigners were relaxed and the petitioner has had the right to obtain a travel document since April 2010 and leave and return to Switzerland. As to his efforts to obtain a travel document to study abroad in 2011, the file shows that he did not complete his application correctly, conflating a request for a travel document with a request for a residence permit.

4.10 The State party finds that the petitioner has not, or has not properly, exhausted domestic remedies designed to protect his fundamental rights. The domestic courts have not had an opportunity to consider whether or not there was discrimination within the meaning of article 8, paragraph 2, of the Constitution, or within the meaning of the Convention, with respect to foreign nationals' status in law.

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[8] These remedies are governed by articles 72 and 73 of the Cantonal Act.

Merits

4.11 The State party notes that the petitioner's status does not depend on his national origin. His status, and the disadvantages associated with it, can be changed if he meets the personal criteria for obtaining a residence permit. Moreover, the author has not demonstrated that his national origin is an impediment to his obtaining a residence permit. The fact that he has not obtained a residence permit derives from his personal situation and not his national origin or his race. In its ruling of 22 February 2007, the Administrative Tribunal of the Canton of Vaud found that the petitioner had not shown that he could support himself in a sustainable fashion (he was wholly supported by the canton of Vaud) even though he could have entered gainful employment. These arguments do not appear to be without foundation given the State party's competence to regulate immigration. Controlling immigration is not against the Convention and would be a violation only if the measures used actually concealed racial discrimination.

4.12 The petitioner claims that he was unable to work but complains that he was required to inform the Employment Office whenever he obtained work. In fact, under article 85, paragraph 6, of the Foreign Nationals Act, anyone admitted on a temporary basis may enter gainful employment subject to authorization. In the canton of Vaud, since at least 2000, in the authorization procedure the authorities do no more than look at the conditions of employment. Thus, contrary to the petitioner's claim, there was and is nothing to stop him looking for work. The State party adds that, since the Foreign Nationals Act entered into force on 1 January 2008, persons admitted on a temporary basis have unlimited access to the Swiss labour market and have been declared a target group in the encouragement of integration. In light of the foregoing, the State party considers the petitioner's claim in respect of access to employment to be unfounded. Furthermore, this position is underpinned by the State party's reservation to article 2, paragraph 1, of the Convention.

4.13 As to access to university education and the right to freedom of movement throughout the country, the State party notes that there is no written trace of any application by the petitioner for admission to the University of Lausanne for the year 2000. He may have obtained information verbally but no written application seems to have been made. In 2008 the author sought admission on the basis of application to the Social and Political Sciences faculty at the University of Lausanne. His request was turned down on 26 March 2008 as it did not meet the criteria under article 85 of the Regulations to the Act of 6 July 2004 on the University of Lausanne.[9] In its letter of rejection, the Matriculation and Registration Office informed him that he could register for an entrance examination and advised him to find out about the requirements for taking the examination. The petitioner did not heed this advice and simply turned up at the University thinking that he could take the examination without going through the formalities established in the Regulations. Even though his situation had not changed, he submitted another application in 2009 and was therefore rejected again under article 85 of the Regulations. According to the university files, no application was submitted in 2010. His application in 2011 was turned down for the same reasons as before. On 3 March 2011, he asked the University of Lausanne to inform him of the remedies available and the University did so in a letter of 8 March 2011. The petitioner did not make use of those remedies. The State party points out that, while the Regulations preclude the matriculation of persons admitted to Switzerland temporarily, it is not for reasons of race but because their status in Switzerland is uncertain as their asylum application has been turned down and they are only in the country because return is not yet possible. The State party points out that the Committee's case law holds that restricted access to universities (by persons who do not have a permanent residence permit, for example) is compatible with the Convention.[10]

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[9] Article 85 Administrative requirements

An application for admission may be submitted by: Swiss nationals, Lichtenstein nationals, foreigners resident in Switzerland ("C" permit), other foreigners resident in Switzerland and who have held a Swiss work permit for at least three years, and political refugees, provided that they meet the following supplementary requirements:

(a) Professional or upper secondary qualification;

(b) Equivalent of three years' full-time post-qualification employment;

(c) A duly constituted and submitted application;

(d) Successful completion of the various stages of the admission procedure;

(e) Completion of the administrative formalities for matriculation.

Applications from candidates meeting these administrative requirements shall be forwarded to the relevant faculty by the Board of the University.

4.14 With regard to access to treatment and health insurance, the State party notes that the right to obtain assistance in emergencies under article 12 of the Constitution entails, among other things, a right of access to basic medical care that must be the same for all, without discrimination of any kind. This is a social right that is directly justiciable in the courts. Compulsory health insurance for persons admitted on a temporary basis is governed by the Federal Asylum Act and the Federal Act of 18 March 1994 on Health Insurance. In this case, the petitioner had to go urgently to the Stomatology and Dental Care Service on 14 January 2008 to have a tooth treated. The invoices for treatment were sent to the Migrant Reception Office of the Canton of Vaud, which settled them. As to the estimate for dental treatment prepared for the petitioner by a dentist, the Migrant Reception Office requested a breakdown of the estimate and, after verification, provided a payment guarantee. The authorities of the State party can thus not be accused of failing to guarantee the petitioner's access to health.

4.15 The State party notes that, according to the petitioner, the housing inspections under article 32 of the Cantonal Act on Assistance to Asylum Seekers and Other Categories of Foreign Nationals are a violation of his right to respect for the home, and discriminatory. The petitioner occupies accommodation provided by the Migrant Reception Office and, under article 81 of the Federal Asylum Act and articles 28 ff. of the Cantonal Act on Assistance to Asylum Seekers, that Office may obtain entry to a dwelling under certain conditions relating to the general interest and maintaining a due sense of proportion. As it happens, between 2009 and the time of writing of the State party's observations, the Office has had to enter the petitioner's dwelling on only two occasions, which cannot be considered disproportionate. The Office's maintenance service needed to go in first in order to carry out a health check of the premises and on the second occasion, in January 2011, in order to take some measurements. Prior written notification was given of both of the inspections, and no objection was made to the decisions. The State party has no knowledge of any incident regarding the petitioner's letterbox. In any event, the checks carried out in this instance are not indicative of any discrimination on the grounds of race, colour, descent or national or ethnic origin.

4.16 With regard to social assistance, the author is completely supported by the Migrant Reception Office. In accordance with the relevant legal provisions, he is granted the sum of CHF 12.50 daily, the same amount paid to everyone in his situation. An appeal may be lodged in respect of this benefit, to the Director of the Office and within 10 days of the notification of granting of assistance, in accordance with article 72 of the Cantonal Act on Assistance to Asylum Seekers and article 6 of the Social Welfare Guide of the Canton of Vaud. In this case the petitioner has never objected to these decisions by challenging the amount granted; he has only challenged amounts withheld when, in one case, he had failed to comply with the notice requiring him to attend courses at which attendance was compulsory and, in the other, he had earned some income by giving French lessons. His appeal in respect of the latter is pending with the Chief of the Finance Department of the Canton.

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[10] See communication No. 42/2008, *D.R. v. Australia*, opinion adopted on 14 August 2009, para. 7.2.

4.17 As to the complaint under article 6 of the Convention, and as mentioned above, the State party considers that the petitioner has not, or has not properly, exhausted all remedies, which means that the question of whether there has been discrimination has not been considered by the courts. What is relevant from the standpoint of article 6 is that the Swiss legal system provides effective protection against true discrimination (provided there is a defensible claim). Swiss case law, which is broad in scope, shows that that protection is effective and genuine.

Petitioner's comments on the State party's observations on admissibility and merits

5.1 On 6 November 2012 the petitioner submitted comments. He complains that temporary admission is a system designed to deter foreigners from remaining on Swiss territory. Temporary admission status has no time limit and people might live in Switzerland with that status for 20 or 30 years. Persons admitted on a temporary basis are set apart by the regime associated with this status, which applies in every area of daily life, and by their physical appearance, their language and their national and cultural origin. In his view the notion of origin and nationality cannot be separated from the status of temporary admission. The ban on racial discrimination within the meaning of article 1 of the Convention has not been faithfully incorporated into Swiss law and therefore does not guarantee protection in line with international standards. Switzerland has three distinct groups, based on nationality: (1) Swiss; (2) Europeans and American, Canadian, Australian and New Zealand citizens; and (3) nationals of third countries. A person with temporary admission status can only belong to the third category.

5.2 The petitioner describes comments made by officials of the Federal Office for Migration, some of them on the radio, to the effect that persons with temporary admission status are welfare cases. He maintains that these comments are a violation of article 4 of the Convention. He describes the attitude of the migration services in their handling of cases, an attitude that he maintains has never been penalized by the State party's courts. He therefore asks the Committee not to concentrate on specific claims but rather to make an overall analysis and try to establish to what extent the social, economic and cultural context in Switzerland is a factor in discrimination against particular groups of the foreign population, whether in respect of civil and political rights or economic, social and cultural rights.

5.3 The petitioner notes that the State party has itself acknowledged that there is exclusion of persons who have been legally settled on its territory for a certain length of time. An analysis should therefore be made of the identity of those who make up the group of persons admitted on a temporary basis. The State party sees temporary admission as a highly strategic status. According to the petitioner, it does not deny racial discrimination but justifies it on the grounds that it has the right to pass laws discriminating against or excluding particular persons or groups within the foreign population under its jurisdiction. The petitioner recalls the Committee's general recommendation No. 22 (1996), on article 5 and refugees and displaced persons,[11] whereby the State party has a positive obligation to take a series of measures, notably economic and social measures, to protect individuals and ensure the effective realization of their fundamental rights.

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[11] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 18* (A/51/18), annex VIII, sect. C.

5.4 According to the petitioner, holders of an "F" permit are subject to arbitrary decisions by the State party's administrative authorities. Every Swiss institution must inform the migration services of any procedures undertaken by members of this group. That includes schools, regional employment offices, unemployment benefit offices, doctors, banks and the Post Office. This is a dehumanizing practice. This intrusive behaviour by the migration services, and all discriminatory practices by migration officials, go unpunished. In fact, since no justification is given for the decisions taken by the migration services, any recourse against them is ineffective, particularly as the courts themselves recognize the competence of these services in this regard. The petitioner refers to a legal opinion published in a report of the Federal Commission against Racism to the effect that not only do the migration services decide whether, and under what circumstances, to consider hardship cases (temporary admission), but that they have a free hand, at least for decisions at the cantonal level, in interpreting and weighing the criteria. The decision-making process is thus also a political process.[12] This legal opinion goes on to point out that this situation is problematic because those who are victims of discriminatory application of the law by the authorities cannot appeal.

5.5 On these grounds the petitioner criticizes the system of issuing a residence permit to these individuals while keeping them under close supervision, controlling their access to all rights, including the right to work. Supervision in his case included weekly calls to the employer he worked for between May 2000 and September 2002 to find out how he was working.

5.6 The differences in the treatment of foreigners are blatant, with rejected asylum seekers receiving emergency aid of CHF 8 to CHF 10 per day, temporary admissions receiving aid of CHF 12.50 per day and other categories of foreigners and Swiss requiring social assistance receiving around CHF 40 per day (CHF 1,200 per month). The petitioner has tried to contest the amount paid but to no avail – in his view because there are no remedies. The payslip states that the recipient may contest the payment but this refers to the right to challenge an error in the payment, not to contest the amount of social assistance as such. In addition, persons on temporary admission may not freely choose their doctor (Cantonal Act on Assistance to Asylum Seekers and Other Categories of Foreign Nationals, art. 37, para. 2). A person can receive no treatment apart from emergency treatment without a payment guarantee issued by the Migrant Reception Office. In his case the Office did not accept the dentist's estimate and his tooth became infected.

5.7 As regards the violation of privacy, the petitioner rejects the State party's explanations and says that the Migrant Reception Office did not give him advance notice of the official's visit but left a note afterwards saying they had called. The petitioner tried to obtain explanations and lodge an appeal, to no avail.

5.8 The petitioner considers that the "F" permit is not a reliable, unambiguous document that allows him to move freely within the Schengen area in Europe. Although in theory that possibility is open to him, in practice the other European States interpret the document differently, as it states that permit holders may not cross the Swiss border and, if they do so, may not return to Switzerland.

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[12] S. Bolz, "Cas de rigueur dans le domaine de l'asile – les mêmes chances pour tous?" Report of the Federal Commission against Racism, TANGRAM No. 24, November 2009, p. 76. Available from www.ekr.admin.ch/pdf/Tangram_24.pdf (accessed 26 February 2014).

5.9 As regards access to employment, contrary to the assertions by the State party, the obligation is not only to report any new job. The employer has to request authorization using form 1350 and await a reply before hiring the person, which is enough to deter employers from hiring the person. This is clearly indicated in the certificates issued by the Population Service of the Canton of Vaud. A report by the Swiss Refugee Council, of 1 April 2008 — i.e., after the entry into force of the new Foreign Nationals Act — states that these people live for many years in a situation that is limited in time and are involuntarily dependent on welfare because permission to work is still granted at the authorities' discretion and many employers believe that persons admitted on a temporary basis will only be staying in Switzerland temporarily.[13] The employer needs authorization from the authorities and the authorities need a work contract in order to grant authorization. The aim is thus to deter people from working.

5.10 As to the remedies attempted, the petitioner states that his first appeal against the Population Service of the Canton of Vaud (Asylum Division, Lausanne) was rejected by a decision of 18 November 2003. His application for a review of that decision was rejected by the Plenary of the Administrative Tribunal on 19 May 2004, without leave to apply to the Federal Supreme Court. His second appeal against the Vaud Population Service was rejected (in this case he was not represented by a lawyer), with leave to appeal to the Federal Supreme Court. Unfortunately, his lawyer did not submit the brief in time and the Supreme Court found the appeal inadmissible. On 21 May 2010 the petitioner lodged a complaint against the Migrant Reception Office with the public prosecutor for breaking into his home. This complaint was rejected by an order dated 4 June 2010. On 25 June 2010 the petitioner lodged a further complaint with the justice of the peace in respect of the actions of Migrant Reception Office officials.[14] This application was rejected on the grounds that the time limits had not been observed.

5.11 When the justice of the peace dismissed the case, the petitioner went to the police to report the intrusion into his home and the violation of his private correspondence. On 12 January 2011 a police inspector told the petitioner that the case would not be put to the prosecutor since the actions did not constitute a criminal offence; however he could bring it before the prosecutor himself. Accordingly, in a letter dated 17 January 2011, the petitioner lodged a complaint,[15] and this was rejected by an order of 2 May 2011.[16] The petitioner had 10 days to appeal this decision, and did so. In this appeal he referred directly to the Convention and claimed racial discrimination. In a decision of 11 July 2011, the Criminal Appeals Chamber of the Cantonal Court rejected the appeal on the grounds that the petitioner had not used the correct remedies or observed the time limits in respect of the actions of Migrant Reception Office officials regarding his access to social assistance and medical treatment. As to the violation of his home, the court agreed that the actions did not constitute an offence. The petitioner's appeal against this decision was rejected by the Federal Supreme Court on 18 August 2011 on the grounds that no offence had been committed. In the author's view, if racial discrimination had been adequately incorporated into Swiss law, arbitrary actions of that kind would constitute racial discrimination.

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[13] Swiss Refugee Council (OSAR), *La Suisse terre d'asile*, 1 April 2008.

[14] This letter does not allege racial discrimination but complains of the actions taken by migration officials in order to exclude him or put him at risk.

[15] The complaint concerned not only the violation of his place of residence but also the actions of Migrant Reception Office officials with regard to the choice of social worker assigned to handle his case, and freedom of access to all medical treatment. This appeal alleges racial discrimination and cites the provisions of the Convention and article 261 bis of the Swiss Criminal Code, on racial discrimination.

[16] The prosecutor found that the Migrant Reception Office staff had carried out tasks that were part of their job description and were not unlawful.

5.12 The petitioner also impugns the Migrant Reception Office of the Canton of Vaud for having compelled him to take training courses designed for newcomers. Failure to attend entailed withholding part of the emergency aid grant. On those grounds and referring to the earlier complaints, he accused the Director of the Migrant Reception Office of abuse of authority, racial discrimination and violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The public prosecutor rejected this application on 23 February 2012, finding that the Migrant Reception Office had not opposed the petitioner's attempts to find work and that there had been no harassment by mail nor violation of his home or his right to health. On 9 March 2012 the petitioner lodged an appeal with the Cantonal Court alleging, among other things, racial discrimination under article 261 bis of the Swiss Criminal Code. On 14 June 2012 the Criminal Appeals Chamber of the Cantonal Court rejected the appeal on the grounds that the absence from courses the petitioner had been invited to attend could not derive from any criminal offence. The defence of the petitioner's interests did not therefore require the appointment of legal counsel.

Further information from the State party

6. On 25 January 2013, the State party informed the Committee that it would not be presenting further observations. In its view, the petitioner's comments confirm that this is not a case of racial discrimination within the meaning of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, whether or not the communication is admissible.

7.2 The Committee notes that the State party has challenged the admissibility of the complaint on the grounds that domestic remedies had not been exhausted, the six-month time bar had been exceeded in respect of some remedies and that the author's complaints were based solely on his status under the law on foreign nationals and not on his origin or nationality.

7.3 The Committee considers that the question of admissibility raises issues of fact and of law that are closely bound up with the merits of the communication and accordingly decides to consider admissibility and the merits together.

Consideration on the merits

8.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the communication in light of all the information submitted to it by the petitioner and the State party.

8.2 The Committee observes at the outset that it must determine whether an act of racial discrimination as defined in article 1 of the Convention has occurred before it can decide which, if any, substantive obligations in the Convention to prevent, protect against and remedy such acts, have been breached by the State party.[17]

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[17] See communication No. 31/2003, *L.R. et al. v. Slovakia*, opinion adopted on 7 March 2005, para. 10.2.

8.3 According to the petitioner, his temporary admission status and the decisions and attitudes adopted by the authorities in accordance with that status make it possible for them not only to regulate his access to the labour market, medical treatment and academic and vocational training, and to interfere in his private life, but also to discredit him with any institution. For the petitioner, these decisions, which give the decision makers a good deal of room for manoeuvre, are in practice directly related to his origins, his integrity, his background and his personality. The Committee notes that the petitioner's claims have been abundantly supported by specific examples of decisions the author considers to be discriminatory against him. The Committee notes in particular the petitioner's claims regarding obstacles to access to work, to vocational and university training and to health.

8.4 The State party maintains that the petitioner's complaints are based solely on his status under the law on foreign nationals and not on his origin or his Somali nationality; that the regulations challenged here do not apply only to Somali nationals or a specific group of individuals within the meaning of article 1 of the Convention. The Committee notes that, according to the State party, temporary admission is a legal status and no particular link with the individual and his or her personal situation, such as that required to demonstrate discrimination, is inherent in this legal status.

8.5 The Committee recalls that article 1 of the Convention defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The Committee also recalls article 1, paragraph 2, which states that the Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens; as well as paragraph 3 of the same article, which provides that nothing in the Convention may be interpreted as affecting in any way the legal provisions of States parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

8.6 The Committee underlines the complexity of the issue raised by this case, which highlights the negative effects of the Swiss "temporary admission" status ("F" permit for foreigners) on some groups of foreigners who can also be distinguished by ethnic or national origin. Nevertheless, the Committee considers that the petitioner in this case has not unequivocally established that the discriminatory acts he attributes to the Migrant Reception Office of the Canton of Vaud and to the judicial authorities were based on his ethnic origin or Somali nationality and not on his status as a foreigner admitted on a temporary basis as provided by Swiss law. The Committee is therefore not convinced that the facts before it constitute discrimination based "on race, colour, descent, or national or ethnic origin" within the meaning of article 1 of the Convention.

8.7 Having reached that conclusion, the Committee will not consider the petitioner's claims under the other provisions of the Convention.

9. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted do not disclose a violation of any of the provisions of the Convention.

10. Notwithstanding the conclusion it has reached in this case, the Committee notes that the State party has itself acknowledged the adverse consequences of temporary admission status on essential areas of life for this category of non-nationals, some of whom find themselves permanently in a situation that ought to be temporary. The Committee therefore draws the attention of the State party to its obligations under the Convention and refers to its general recommendation No. 30 (2004) on discrimination against non-citizens in which,

among other things, it recalls States parties' obligation to take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.[18]

11. Accordingly, the Committee recommends that the State party review the regulations governing its temporary admission regime, with a view to limiting as far as possible the restrictions on the enjoyment and exercise of fundamental rights and in particular rights relating to freedom of movement, particularly when that regime is applied for a long period.

[Adopted in English, French, Russian and Spanish, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

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[18] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18* (A/59/18), chap. VIII, para. 33.

Annex IV

Follow-up information provided in relation to cases in which the Committee adopted recommendations

This annex compiles information received on follow-up to individual communications since the last annual report,[a] as well as any decisions made by the Committee on the nature of those responses.

State party	**Denmark**
Case	***Saada Mohamed Adan*, 43/2008**
Opinion adopted on	13 August 2010
Issues and violations found	Lack of effective inquiry to determine whether the petitioner has suffered discrimination on the base of race: violation of article 2, paragraph 1 (d), and article 4 of the Convention. The failure to effectively investigate the petitioner's complaint under article 266 (b) of the Criminal Code constitutes a separate violation under article 6 of the Convention.
Remedy recommended	The Committee recommended the State party to grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The Committee recalled its general recommendation No. 30 which recommends that States parties take "resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of 'non-citizen' population groups, especially by politicians ..." Taking into account the Act of 16 March 2004, which, inter alia, introduced a new provision in section 81 of the Criminal Code whereby racial motivation constitutes an aggravating circumstance, the Committee recommended that the State party should ensure that the existing legislation is effectively applied so that similar violations do not occur in the future. The State party was also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.
Date of examination of report/s since adoption	The State party's eighteenth and nineteenth periodic reports were examined in August 2010; the twentieth and twenty-first reports are due in 2013.
State party's further submission	By note verbale of 2 April 2012, the State party explained that its position remains unchanged.

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[a] *Official Records of the General Assembly, Sixty-eighth session, Supplement No. 18* (A/68/18).

Further action and/or Committee's decision	On 26 February 2013, the Rapporteur on communications of the Committee met with a representative of the Permanent Mission of Denmark to the United Nations Office in Geneva, to discuss the measures taken by the State party to give effect to the Committee's recommendations and outline the Committee's proposal to close the dialogue with a note of partly satisfactory implementation of the Committee's first recommendation to widely disseminate the Committee's opinion to judicial authorities; and partly unsatisfactory implementation of the Committee's recommendation to compensate for the damage caused to the petitioner. The State party representative assured the Rapporteur that she would convey the Committee's position to the competent authorities in Denmark. To date, no further observation from the State party has been received.
Proposed further action and/or Committee's decision	**At its eighty-fourth session, the Committee decided to close the dialogue with a note of partly satisfactory implementation of the Committee's first recommendation to widely disseminate the Committee's opinion to judicial authorities; and partly unsatisfactory implementation of the Committee's recommendation to compensate for the damage caused to the petitioner.**
State party	**Denmark**
Case	***Dawas, Shawva*, 46/2009**
Opinion adopted on	6 March 2012
Issues and violations found	Failure to effectively protect the petitioners from an alleged act of racial discrimination, and to carry out an effective investigation, which consequently deprived the petitioners from their right to effective protection and remedies against the reported act of racial discrimination: violation of article 2, paragraph 1 (d), and article 6 of the Convention by the State party.
Remedy recommended	The State party was recommended to grant the petitioners an adequate compensation for the material and moral injury suffered.
Date of examination of report/s since adoption	The State party's eighteenth and nineteenth periodic reports were examined in August 2010; the twentieth and twenty-first reports are due in 2013.
State party's reply	On 29 August 2012, the State party replied that it did not wish to make any comments regarding the petitioners' submission and relied on its reply dated 18 June 2012, which was not a rejection of the Committee's recommendations but merely an invitation to the Committee to reconsider its opinion. It added that as Denmark has a free and independent press, the State party has not influence on what is published by the Danish newspapers, including *Jyllands-Posten*.

Petitioners' further comments	On 25 January 2013, the petitioners' representative stated that the Committee has no mandate to reconsider its opinions. Moreover, contrary to the State party's assertion, it has an influence over what is published in Denmark in the sense that it has the obligation to give wide publicity to the Committee's opinion (see para. 10 of the Committee's opinion). The State party has not done so, neither in the form of a press release or a mention on an official homepage nor in any public forums. In the petitioner's view however, the critical information that was published on 23 June 2012 in the Danish newspaper *Jyllands-Posten* about the present case was based on information that the State party must have provided and the petitioners were not given the possibility to challenge it.
Further action and/or Committee's decision	On 26 February 2013, the Rapporteur on communications of the Committee met with a representative of the Permanent Mission of Denmark to the United Nations Office in Geneva, to discuss on the measures taken by the State party to give effect to the Committee's recommendations and present the Committee's position that its opinion dated 6 March 2012 is not subject to reconsideration in the absence of any such provision in the Committee's rules of procedure; that the State party is under an obligation to widely disseminate the Committee's opinion; and that the victims should receive adequate compensation for the material and moral injury suffered. The State party's representative assured the Rapporteur that she would convey the Committee's position to the competent authorities in Denmark.
Further reply from the State party	**On 20 December 2013, the State party informed the Committee that it did not wish to make further comments on the case and its follow-up. It referred to its letters dated 18 June and 29 August 2012 and reiterated that Denmark has a free and independent press and that the Government has no influence on what is published by the Danish papers, including *Jyllands-Posten*. However, the State party announced that, early 2014, it would submit information to the Committee on initiatives taken since 2004 in order to prevent and fight hate crimes.**
Proposed further action and/or Committee's decision	**The dialogue is ongoing.**
State party	**Germany**
Case	**Turkish Union in Berlin/Brandenburg (TBB), 48/2010**
Opinion adopted on	**26 February 2013**

Issues and violations found	Failure to effectively protect the petitioner from an alleged act of racial discrimination and alleged propaganda based on ideas of racial superiority, and to carry out an effective investigation, which consequently deprived the petitioner of its right to effective protection and remedies against the reported act of racial discrimination and propaganda on ideas of racial superiority: violation of article 2, paragraph 1 (d), 4 and 6 of the Convention by the State party.
Remedy recommended	The State party was recommended to review its policy and procedures concerning prosecution in cases of alleged racial discrimination consisting of the dissemination of ideas of superiority over other ethnic groups and of the incitement to discrimination on such grounds, in the light of its obligations under article 4 of the Convention. The State party was also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.
Date of examination of report/s since adoption	The State party's combined tenth and eleventh reports due in 2012 were submitted in May 2013.
State party's reply	On 1 July 2013, the State party replied that it had taken note of the Committee's opinion and that the opinion and the attached individual opinion of Mr. Carlos Manuel Vázquez had been translated into German. It has been forwarded to the Länder Ministries of Justice, which in turn are responsible for disseminating the opinion and its individual opinion to the courts and pubic prosecution offices for their information. The Public Prosecution Office of the Land of Berlin, as the competent authority for the original case, has been informed of the decision separately and has been asked to examine any possibility of reconsidering the decision to terminate the investigation. The Federal Minister of Justice, Ms. Sabine Leutheusser-Schnarrenberger, has met with representatives of the petitioner in order to discuss the Committee's opinion. In this context, additional measures against racist propaganda and the importance of fighting mainstream racism have been discussed. The Federal Government is currently examining German legislation concerning criminal liability for racist statements in the light of the Committee's opinion. That evaluation will have to take into account the importance of freedom of speech, which is guaranteed by the German Basic Law and by international human rights law. The Federal Government will keep the Committee informed of further developments and looks forward to maintaining the dialogue with the Committee as it prepares for the presentation of its current State report.

Petitioners' further comments	On 14 August 2013, the petitioner's representative has commented on the State party's reply. With regard to the obligation to give wide publicity to the Committee's opinion, the State party has not explained how, by way of specific instructions to the Federal States, the Committee's opinion would indeed be properly and effectively communicated and whether a control committee would be established to supervise the implementation. The counsel added that the Committee's opinion had not yet been made available to the public in German. The Committee's recommendations have therefore not yet been implemented and the follow-up procedure should continue. The counsel requested that the State party transmit to the Committee and, in turn, the counsel all State party's further submissions regarding the announced review of its policy and procedures concerning the prosecution of cases of alleged racial discrimination and criminal liability for racist statements in the light of the Committee's opinion.
Further reply from the State party	On 29 August 2013, the State party commented on the follow-up reply of the petitioner's representative, stating that the distribution and communication of the decision to the courts and prosecutor's offices in the Länder was part of the constitutional obligations of the Länders, and that the Federal Government did not set up control committees to monitor whether the Länders fulfil their constitutional obligations in specific cases. However, the translation of the decision and of the dissenting opinion has been published on the Homepage of the Ministry of Justice and in the Human Rights Law Journal (Issue 10-12, EuGRZ 2013, p. 266), as well as on the website of the German Institute for Human Rights.
Proposed further action and/or Committee's decision	**The dialogue is ongoing.**

Annex V

Country Rapporteurs for reports of States parties considered by the Committee and for States parties considered under the review procedure at the eighty-third and eighty-fourth sessions

Periodic reports considered by the Committee	*Country Rapporteur*
Belarus Eighteenth and nineteenth periodic reports (CERD/C/BLR/18-19)	Mr. Lindgren
Belgium Sixteenth to nineteenth periodic reports (CERD/C/BEL/16-19)	Mr. Vázquez
Burkina Faso Twelfth to nineteenth periodic reports (CERD/C/BFA/12-19)	Mr. Ewomsan
Chad Sixteenth to eighteenth (CERD/C/TCD/16-18)	Ms. Dah
Chile Nineteenth to twenty-first periodic reports (CERD/C/CHL/19-21)	Mr. de Gouttes
Cyprus Seventeenth to twenty-second periodic reports (CERD/C/CYP/17-22 and Corr.1)	Ms. January-Bardill
Honduras Initial to fifth periodic reports (CERD/C/HND/1-5)	Mr. Murillo Martínez
Jamaica Sixteenth to twentieth periodic reports (CERD/C/JAM/16-20)	Ms. Amir
Kazakhstan Sixth and seventh periodic reports (CERD/C/KAZ/6-7)	Mr. Huang
Montenegro Second and third periodic reports (CERD/C/MNE/2-3)	Mr. Kemal
Luxembourg Fourteenth to seventeenth periodic reports (CERD/C/LUX/14-17)	Mr. Avtonomov

Periodic reports considered by the Committee	*Country Rapporteur*
Poland Twentieth and twenty-first periodic reports (CERD/C/POL/20-21)	Mr. Lahiri
Sweden Nineteenth to twenty-first periodic reports (CERD/C/SWE/19-21)	Mr. Kut
Switzerland Seventh to ninth periodic reports (CERD/C/CHE/7-9)	Ms. Crickley
Uzbekistan Eighth and ninth periodic reports (CERD/C/UZB/8-9)	Mr. Diaconu
Venezuela (Bolivarian Republic of) Nineteenth to twenty-first periodic reports (CERD/C/VEN/19-21)	Mr. Calí Tzay

Annex VI

List of documents issued for the eighty-third and eighty-fourth sessions of the Committee[a]

CERD/C/83/1	Provisional agenda and annotations of the eighty-third session of the Committee
CERD/C/83/2	Status of submission of reports by States parties under article 9, paragraph 1, of the Convention for the eighty-third session of the Committee
CERD/C/83/3	Consideration of copies of petitions, copies of reports and other information relating to the trust and non-self-governing territories and to all other territories to which the General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/84/1	Provisional agenda and annotations of the eighty-fourth session of the Committee
CERD/C/84/2	Status of submission of reports by States parties under article 9, paragraph 1, of the Convention for the eighty-fourth session of the Committee
CERD/C/SR.2234-2263 and respective addenda	Summary records of the eighty-third session of the Committee
CERD/C/SR.2264-2293 and respective addenda	Summary records of the eighty-fourth session of the Committee

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[a] This list only concerns documents issued for general distribution.

Annex VII

Comments of States parties on the concluding observations adopted by the Committee

A. Comments by the State of Chile regarding the concluding observations of the Committee on the Elimination of Racial Discrimination on the combined nineteenth to twenty-first periodic reports of Chile (CERD/C/CHL/CO/19-21)

1. This summarizes some of the comments made by the Government of Chile regarding the concluding observations issued by the Committee on the Elimination of Racial Discrimination following its consideration of the combined nineteenth to twenty-first periodic reports of Chile, on 13 and 14 August 2013. The observations were disseminated to all State bodies responsible for issues addressed in the Convention.[a]

2. The purpose of these comments is to inform the Committee about some noteworthy steps taken recently that, due to time constraints, were not mentioned during the consideration of the report, and to express concern about some statements made that emphasize a lack of compliance or progress in the implementation of certain provisions of the Convention. The comments refer to the following paragraphs of the concluding observations: paragraph 7 on the immunities enjoyed by members of the National Human Rights Institute, paragraph 8 on statistics, paragraph 9 on the definition of discrimination and special measures, paragraph 12 on constitutional recognition and consultation of indigenous peoples, paragraph 13 on ancestral lands, paragraph 14 on the Counter-Terrorism Act and excessive use of force by agents of the State against indigenous peoples, paragraph 15 on indigenous languages and education, paragraph 16 on marginalization of indigenous peoples, paragraph 18 on migrants and paragraph 19 on refugees and asylum seekers.

3. The Government of Chile reaffirms that it supports and promotes the work of the multilateral system for the promotion and protection of human rights and the work of the treaty bodies in particular. It has thus supported the intergovernmental treaty body strengthening process which has been led by the High Commissioner for Human Rights since 2009 and is currently being discussed in the United Nations General Assembly.

4. It also attaches particular importance to the review process, because it sees the work of the Committees and their relationship with States as a cooperative endeavour, using dialogue as a way to improve fulfilment of obligations under a given treaty. Chile makes continuous efforts to bring its internal practices into line with the Committees' recommendations, provided they are achievable, objective and proportional to the country's level of development.

5. Given the limited space available, we will refer to just a few of the Committee's observations, pointing out once again that the body of our response is contained in the annex.

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[a] The full comments are available on the website of the Committee on the Elimination of Racial Discrimination: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=818&Lang=en.

6. Firstly, the Government of Chile is concerned about the fact that the Committee has not acknowledged the important decisions and actions the State has taken over the years regarding indigenous matters. There is a noticeable emphasis on shortcomings, and no recognition of the tangible progress made on a range of issues such as land, recovery of cultural heritage and consultation processes.

7. Secondly, with regard to paragraph 14 on the Counter-Terrorism Act and excessive use of force by agents of the State against indigenous peoples, the State wishes to reaffirm that it does not have a policy of applying the Act in a disproportionate manner or using it against the Mapuche people – i.e., in a discriminatory way. Nor does it agree with the assertion that there is a lack of objective legal criteria for the enforcement of the Act. In recent years, the State has expanded its efforts to provide human rights training and education to security agents, its internal control mechanisms to detect excessive use of force by members of the Carabineros and its internal control mechanisms to deal with cases of misconduct; it has also placed special emphasis on protecting vulnerable groups. All these measures are described in detail in the annex.

8. Thirdly, and in relation to paragraph 15 on indigenous languages and education, the State is surprised by the Committee's assessment of the information provided. For example, the recommendation to "allocate sufficient resources to revive indigenous languages and ensure that indigenous peoples have access to education" does not give due weight to the action taken in this regard, such as implementing the Bilingual Intercultural Education Programme in schools throughout Chile, from kindergarten to basic education, providing many more indigenous scholarships, and designating flagship multicultural high schools. Chile would like to understand what basis and parameters are used to determine whether the resources allocated are "sufficient". The Government has also used various policies to promote the use of indigenous languages in primary schools and to encourage the employment of indigenous teachers. Lastly, by Act No. 20.433 establishing the Citizen Community Radio Broadcasting Service, the constraints faced by indigenous peoples with regard to the use of community-based media have been reduced. These measures were mentioned during the review and are described in detail in the annex; the State would therefore like to know what standard it should aim for in order for its efforts to meet with the Committee's approval.

9. The Government of Chile encourages the Committee to make an effort to understand the national context and to recognize the progressive nature of the steps taken to comply with international norms and standards, which do not allow for relativism or exceptions. For this reason, further information is provided in the annex so as to explain the contexts, social situations and factual elements. Chile is confident that, with the detailed information provided, the Committee will have before it sufficient evidence to show that the State of Chile is staunchly committed to making progress in complying with and implementing the Convention.

B. Comments by the State of Poland regarding the concluding observations of the Committee on the Elimination of Racial Discrimination on the combined twentieth and twenty-first periodic reports of Poland (CERD/C/POL/CO/20-21)

1. The Permanent Mission of the Republic of Poland to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights and, with reference to the review of Poland during eighty-fourth session of the Committee on the Elimination of Racial Discrimination, has the honour to present its position regarding paragraph 14 of the concluding

observations (CERD/C/POL/CO/20-21) pertaining to the situation of the Jewish community.

2. The Republic of Poland is strongly committed to combating all forms of racial discrimination. Of particular importance is combating intolerance or hatred towards the Jewish community in Poland which suffered immensely during Second World War. Therefore, the Republic of Poland wishes to underline that "tragic experience" and "virtual extermination of Jewish community", to which the Committee refers in the concluding observations, was neither orchestrated nor executed by the Polish authorities. It is worth underlining that between 1939 and 1945 Poland was occupied by the foreign powers, namely Nazi Germany and Soviet Union.

3. This historic fact does not exclude incidents based on anti-Semitic sentiment which previously have been and are constantly addressed by the Government of the Republic of Poland, as indicated during the review on February 10–11 2014. However, Poland is unable to agree or accept the observation which, even indirectly, implies responsibility of any Polish authorities for the Holocaust. Therefore the Permanent Mission of the Republic of Poland requests the Office of the UN High Commissioner for Human Rights to duly incorporate this note as an official annex to the annual report of the Committee on the Elimination of Racial Discrimination, to be presented to the UN General Assembly.

4. The Permanent Mission of the Republic of Poland avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.

Annex VIII

Text of general recommendations adopted by the Committee in the reporting period

General recommendation No. 35 (2013)
Combating racist hate speech

I. Introduction

1. At its eightieth session, the Committee on the Elimination of Racial Discrimination (the Committee) decided to hold a thematic discussion on racist hate speech during its eighty-first session. The discussion took place on 28 August 2012 and focused on understanding the causes and consequences of racist hate speech, and how the resources of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) may be mobilized to combat it. Participants in the discussion included, in addition to members of the Committee, representatives from permanent missions to the United Nations Office in Geneva, national human rights institutions, non-governmental organizations, academics and interested individuals.

2. Following the discussion, the Committee expressed its intention to work on drafting a general recommendation to provide guidance on the requirements of the Convention in the area of racist hate speech in order to assist States parties in discharging their obligations, including reporting obligations. The present general recommendation is of relevance to all stakeholders in the fight against racial discrimination, and seeks to contribute to the promotion of understanding, lasting peace and security among communities, peoples and States.

Approach adopted

3. In drafting the recommendation, the Committee has taken account of its extensive practice in combating racist hate speech, concern about which has engaged the full span of procedures under the Convention. The Committee has also underlined the role of racist hate speech in processes leading to mass violations of human rights and genocide, and in conflict situations. Key general recommendations of the Committee that address hate speech include general recommendations No. 7 (1985) relating to the implementation of article 4;[1] No. 15 (1993) on article 4, which stressed the compatibility between article 4 and the right to freedom of expression;[2] No. 25 (2000) on gender-related dimensions of racial discrimination;[3] No. 27 (2000) on discrimination against Roma;[4] No. 29 (2002) on descent;[5] No. 30 (2004) on discrimination against non-citizens;[6] No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system;[7]

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[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 18* (A/40/18), chap. VII, sect. B.

[2] Ibid., *Forty-eighth Session, Supplement No. 18* (A/48/18), chap. VIII, sect. B, para. 4.

[3] Ibid., *Fifty-fifth Session, Supplement No. 18* (A/55/18), annex V, sect. A.

[4] Ibid., annex V, sect. C.

[5] Ibid., *Fifty-seventh Session, Supplement No. 18* (A/57/18), chap. XI, sect. F.

[6] Ibid., *Fifty-ninth Session, Supplement No. 18* (A/59/18), chap. VIII.

[7] Ibid., *Sixtieth Session, Supplement No. 18* (A/60/18), chap. IX.

and No. 34 (2011) on racial discrimination against people of African descent.[8] Many general recommendations adopted by the Committee relate directly or indirectly to hate speech issues, bearing in mind that effectively combating racist hate speech involves the mobilization of the full normative and procedural resources of the Convention.

4. By virtue of its work in implementing the Convention as a living instrument, the Committee engages with the wider human rights environment, awareness of which suffuses the Convention. In gauging the scope of freedom of expression, it should be recalled that the right is integrated into the Convention and is not simply articulated outside it: the principles of the Convention contribute to a fuller understanding of the parameters of the right in contemporary international human rights law. The Committee has integrated this right to freedom of expression into its work on combating hate speech, commenting where appropriate on its lack of effective implementation and, where necessary, drawing upon its elaboration in sister human rights bodies.[9]

II. Racist hate speech

5. The drafters of the Convention were acutely aware of the contribution of speech to creating a climate of racial hatred and discrimination, and reflected at length on the dangers it posed. In the Convention, racism is referred to only in the context of "racist doctrines and practices" in the preamble, a phrase closely linked to the condemnation in article 4 of dissemination of ideas of racial superiority. While the term hate speech is not explicitly used in the Convention, this lack of explicit reference has not impeded the Committee from identifying and naming hate speech phenomena and exploring the relationship between speech practices and the standards of the Convention. The present recommendation focuses on the ensemble of Convention provisions that cumulatively enable the identification of expression that constitutes hate speech.

6. Racist hate speech addressed in Committee practice has included all the specific speech forms referred to in article 4 directed against groups recognized in article 1 of the Convention — which forbids discrimination on grounds of race, colour, descent, or national or ethnic origin — such as indigenous peoples, descent-based groups, and immigrants or non-citizens, including migrant domestic workers, refugees and asylum seekers, as well as speech directed against women members of these and other vulnerable groups. In the light of the principle of intersectionality, and bearing in mind that "criticism of religious leaders or commentary on religious doctrine or tenets of faith" should not be prohibited or punished,[10] the Committee's attention has also been engaged by hate speech targeting persons belonging to certain ethnic groups who profess or practice a religion different from the majority, including expressions of Islamophobia, anti-Semitism and other similar manifestations of hatred against ethno-religious groups, as well as extreme manifestations of hatred such as incitement to genocide and to terrorism. Stereotyping and stigmatization of members of protected groups has also been the subject of expressions of concern and recommendations adopted by the Committee.

7. Racist hate speech can take many forms and is not confined to explicitly racial remarks. As is the case with discrimination under article 1, speech attacking particular racial or ethnic groups may employ indirect language in order to disguise its targets and

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[8] Ibid., *Sixty-sixth Session, Supplement No. 18* (A/66/18), annex IX.

[9] Notably Human Rights Committee general comment No. 34 (2011) on freedoms of opinion and expression (*Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 40*, vol. I (A/66/40 (Vol. I)), annex V).

[10] Ibid., para. 48.

objectives. In line with their obligations under the Convention, States parties should give due attention to all manifestations of racist hate speech and take effective measures to combat them. The principles articulated in the present recommendation apply to racist hate speech, whether emanating from individuals or groups, in whatever forms it manifests itself, orally or in print, or disseminated through electronic media, including the Internet and social networking sites, as well as non-verbal forms of expression such as the display of racist symbols, images and behaviour at public gatherings, including sporting events.

III. Resources of the Convention

8. The identification and combating of hate speech practices is integral to the achievement of the objectives of the Convention – which is dedicated to the elimination of racial discrimination in all its forms. While article 4 of the Convention has functioned as the principal vehicle for combating hate speech, other articles in the Convention make distinctive contributions to fulfilling its objectives. The due regard clause in article 4 explicitly links that article with article 5, which guarantees the right to equality before the law, without racial discrimination in the enjoyment of rights, including the right to freedom of opinion and expression. Article 7 highlights the role of "teaching, education, culture and information" in the promotion of inter-ethnic understanding and tolerance. Article 2 incorporates the undertaking by States parties to eliminate racial discrimination, obligations that receive their widest expression in article 2, paragraph 1 (d). Article 6 focuses on securing effective protection and remedies for victims of racial discrimination and the right to seek "just and adequate reparation or satisfaction" for damage suffered. The present recommendation focuses principally on articles 4, 5 and 7 of the Convention.

9. As a minimum requirement, and without prejudice to further measures, comprehensive legislation against racial discrimination, including civil and administrative law as well as criminal law, is indispensable to combating racist hate speech effectively.

Article 4

10. The chapeau of article 4 incorporates the obligation to take "immediate and positive measures" to eradicate incitement and discrimination, a stipulation that complements and reinforces obligations under other articles of the Convention to dedicate the widest possible range of resources to the eradication of hate speech. In general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee summarized "measures" as comprising "legislative, executive, administrative, budgetary and regulatory instruments ... as well as plans, policies, programmes and ... regimes".[11] The Committee recalls the mandatory nature of article 4, and observes that during the adoption of the Convention, it "was regarded as central to the struggle against racial discrimination",[12] an evaluation which has been maintained in Committee practice. Article 4 comprises elements relating to speech and the organizational context for the production of speech, serves the functions of prevention and deterrence, and provides for sanctions when deterrence fails. The article also has an expressive function in underlining the international community's abhorrence of racist hate speech, understood as a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society.

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[11] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 18* (A/64/18), annex VIII, para. 13.

[12] General recommendation No. 15, para. 1.

11. In the chapeau and subparagraph (a), regarding "ideas or theories of superiority" or "racial superiority or hatred" respectively, the term "based on" is employed to characterize speech impugned by the Convention. The term is understood by the Committee in the context of article 1 as equivalent to "on the grounds of"[13] and in principle holds the same meaning for article 4. The provisions on dissemination of ideas of racial superiority are a forthright expression of the preventive function of the Convention and are an important complement to the provisions on incitement.

12. The Committee recommends that the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups. The application of criminal sanctions should be governed by principles of legality, proportionality and necessity.[14]

13. As article 4 is not self-executing, States parties are required by its terms to adopt legislation to combat racist hate speech that falls within its scope. In the light of the provisions of the Convention and the elaboration of its principles in general recommendation No. 15 and the present recommendation, the Committee recommends that the States parties declare and effectively sanction as offences punishable by law:

(a) All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;

(b) Incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin;

(c) Threats or incitement to violence against persons or groups on the grounds in (b) above;

(d) Expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination;

(e) Participation in organizations and activities which promote and incite racial discrimination.

14. The Committee recommends that public denials or attempts to justify crimes of genocide and crimes against humanity, as defined by international law, should be declared as offences punishable by law, provided that they clearly constitute incitement to racial violence or hatred. The Committee also underlines that "the expression of opinions about historical facts" should not be prohibited or punished.[15]

15. While article 4 requires that certain forms of conduct be declared offences punishable by law, it does not supply detailed guidance for the qualification of forms of conduct as criminal offences. On the qualification of dissemination and incitement as offences punishable by law, the Committee considers that the following contextual factors should be taken into account:

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[13] The latter phrase is employed in the seventh preambular paragraph of the Convention. See also paragraph 1 of general recommendation No. 14 (1993) on article 1, paragraph 1, of the Convention (*Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18* (A/48/18), chap. VIII, sect. B).

[14] Human Rights Committee general comment No. 34, paras. 22–25; 33–35.

[15] Ibid., para. 49.

- **The content and form of speech**: whether the speech is provocative and direct, in what form it is constructed and disseminated, and the style in which it is delivered;
- **The economic, social and political climate** prevalent at the time the speech was made and disseminated, including the existence of patterns of discrimination against ethnic and other groups, including indigenous peoples. Discourses which in one context are innocuous or neutral may take on a dangerous significance in another: in its indicators on genocide the Committee emphasized the relevance of locality in appraising the meaning and potential effects of racist hate speech;[16]
- **The position or status of the speaker** in society and the audience to which the speech is directed. The Committee consistently draws attention to the role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by the Convention, and has encouraged such persons and bodies to adopt positive approaches directed to the promotion of intercultural understanding and harmony. The Committee is aware of the special importance of freedom of speech in political matters and also that its exercise carries with it special duties and responsibilities;
- **The reach of the speech**, including the nature of the audience and the means of transmission: whether the speech was disseminated through mainstream media or the Internet, and the frequency and extent of the communication, in particular when repetition suggests the existence of a deliberate strategy to engender hostility towards ethnic and racial groups;
- **The objectives of the speech**: speech protecting or defending the human rights of individuals and groups should not be subject to criminal or other sanctions.[17]

16. Incitement characteristically seeks to influence others to engage in certain forms of conduct, including the commission of crime, through advocacy or threats. Incitement may be express or implied, through actions such as displays of racist symbols or distribution of materials as well as words. The notion of incitement as an inchoate crime does not require that the incitement has been acted upon, but in regulating the forms of incitement referred to in article 4, States parties should take into account, as important elements in the incitement offences, in addition to the considerations outlined in paragraph 15 above, the intention of the speaker, and the imminent risk or likelihood that the conduct desired or intended by the speaker will result from the speech in question, considerations which also apply to the other offences listed in paragraph 13.[18]

17. The Committee reiterates that it is not enough to declare the forms of conduct in article 4 as offences; the provisions of the article must also be effectively implemented. Effective implementation is characteristically achieved through investigations of offences set out in the Convention and, where appropriate, the prosecution of offenders. The Committee recognizes the principle of expediency in the prosecution of alleged offenders, and observes that it must in each case be applied in the light of the guarantees laid down in the Convention and in other instruments of international law. In this and other respects under the Convention, the Committee recalls that it is not its function to review the

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[16] Decision on follow-up to the declaration on the prevention of genocide: indicators of patterns of systematic and massive racial discrimination, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18), chap. II, para. 20.

[17] Adapted from the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, para. 22.

[18] Human Rights Committee general comment No. 34, para. 35; Rabat Plan of Action, para. 22.

interpretation of facts and national law made by domestic authorities, unless the decisions are manifestly absurd or unreasonable.

18. Independent, impartial and informed judicial bodies are crucial to ensuring that the facts and legal qualifications of individual cases are assessed consistently with international standards of human rights. Judicial infrastructures should be complemented in this respect by national human rights institutions in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).[19]

19. Article 4 requires that measures to eliminate incitement and discrimination must be taken with due regard to the principles of the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention. The phrase due regard implies that, in the creation and application of offences, as well as fulfilling the other requirements of article 4, the principles of the Universal Declaration of Human Rights and the rights in article 5 must be given appropriate weight in decision-making processes. The due regard clause has been interpreted by the Committee to apply to human rights and freedoms as a whole, and not simply to freedom of opinion and expression,[20] which should however be borne in mind as the most pertinent reference principle when calibrating the legitimacy of speech restrictions.

20. The Committee observes with concern that broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention. States parties should formulate restrictions on speech with sufficient precision, according to the standards in the Convention as elaborated in the present recommendation. The Committee stresses that measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of protest at injustice, social discontent or opposition.

21. The Committee underlines that article 4 (b) requires that racist organizations which promote and incite racial discrimination be declared illegal and prohibited. The Committee understands that the reference to "organized … propaganda activities" implicates improvised forms of organization or networks, and that "all other propaganda activities" may be taken to refer to unorganized or spontaneous promotion and incitement of racial discrimination.

22. Under the terms of article 4 (c) regarding public authorities or public institutions, racist expressions emanating from such authorities or institutions are regarded by the Committee as of particular concern, especially statements attributed to high-ranking officials. Without prejudice to the application of the offences in subparagraphs (a) and (b) of article 4, which apply to public officials as well as to all others, the "immediate and positive measures" referred to in the chapeau may additionally include measures of a disciplinary nature, such as removal from office, where appropriate, as well as effective remedies for victims.

23. As part of its standard practice, the Committee recommends that States parties which have made reservations to the Convention withdraw them. In cases where a reservation affecting Convention provisions on racist speech is maintained, States parties are invited to provide information as to why such a reservation is considered necessary, the nature and scope of the reservation, its precise effects in terms of national law and policy, and any plans to limit or withdraw the reservation within a specified time frame.[21]

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[19] General recommendation No. 31, para. 5 (j).

[20] Committee on the Elimination of Racial Discrimination, communication No. 30/2003, *The Jewish community of Oslo et al. v. Norway*, opinion adopted on 15 August 2005, para. 10.5.

[21] Adapted from the Committee's general recommendation No. 32, para. 38.

Article 5

24. Article 5 of the Convention enshrines the obligation of States parties to prohibit and eliminate racial discrimination and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of civil, political, economic, social and cultural rights, including the rights to freedom of thought, conscience and religion, freedom of opinion and expression, and freedom of peaceful assembly and association.

25. The Committee considers that the expression of ideas and opinions made in the context of academic debates, political engagement or similar activity, and without incitement to hatred, contempt, violence or discrimination, should be regarded as legitimate exercises of the right to freedom of expression, even when such ideas are controversial.

26. In addition to its inclusion in article 5, freedom of opinion and expression is recognized as a fundamental right in a broad range of international instruments, including the Universal Declaration of Human Rights, which affirm that everyone has the right to hold opinions and to seek, receive and impart information and ideas of all kinds through any media and regardless of frontiers.[22] The right to freedom of expression is not unlimited but carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but only if they are provided by law and are necessary for protection of the rights or reputations of others and for the protection of national security or of public order, or of public health or morals.[23] Freedom of expression should not aim at the destruction of the rights and freedoms of others, including the right to equality and non-discrimination.[24]

27. The Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference affirm the positive role of the right to freedom of opinion and expression in combating racial hatred.[25]

28. In addition to underpinning and safeguarding the exercise of other rights and freedoms, freedom of opinion and expression has particular salience in the context of the Convention. The protection of persons from racist hate speech is not simply a matter of opposition between the right to freedom of expression and its restriction for the benefit of protected groups; the persons and groups entitled to the protection of the Convention also enjoy the right to freedom of expression and freedom from racial discrimination in the exercise of that right. Racist hate speech potentially silences the free speech of its victims.

29. Freedom of expression, indispensable for the articulation of human rights and the dissemination of knowledge regarding the state of enjoyment of civil, political, economic, social and cultural rights, assists vulnerable groups in redressing the balance of power among the components of society, promotes intercultural understanding and tolerance, assists in the deconstruction of racial stereotypes, facilitates the free exchange of ideas, and offers alternative views and counterpoints. States parties should adopt policies empowering all groups within the purview of the Convention to exercise their right to freedom of expression.[26]

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[22] Universal Declaration of Human Rights, art. 19.

[23] International Covenant on Civil and Political Rights, art. 19, para. 3.

[24] Universal Declaration of Human Rights, art. 30.

[25] Durban Declaration, para. 90; outcome document of the Durban Review Conference (A/CONF.211/8), paras. 54 and 58.

[26] Adapted from the Rabat Plan of Action, para. 25.

Article 7

30. Whereas the provisions of article 4 on dissemination of ideas attempt to discourage the flow of racist ideas upstream, and the provisions on incitement address their downstream effects, article 7 addresses the root causes of hate speech, and represents a further illustration of the "appropriate means" to eliminate racial discrimination envisaged in article 2, paragraph 1 (d). The importance of article 7 has not diminished over time: its broadly educational approach to eliminating racial discrimination is an indispensable complement to other approaches to combating racial discrimination. Because racism can be the product of, inter alia, indoctrination or inadequate education, especially effective antidotes to racist hate speech include education for tolerance, and counter-speech.

31. Under article 7, States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating universal human rights principles, including those of the Convention. Article 7 is phrased in the same mandatory language as other articles in the Convention, and the fields of activity — "teaching, education, culture and information" — are not expressed as exhaustive of the undertakings required.

32. The school systems in States parties represent an important focus for the dissemination of human rights information and perspectives. School curricula, textbooks and teaching materials should be informed by and address human rights themes and seek to promote mutual respect and tolerance among nations and racial and ethnic groups.

33. Appropriate educational strategies in line with the requirements of article 7 include intercultural education, including intercultural bilingual education, based on equality of respect and esteem and genuine mutuality, supported by adequate human and financial resources. Programmes of intercultural education should represent a genuine balance of interests and should not function in intention or effect as vehicles of cultural assimilation.

34. Measures should be adopted in the field of education aimed at encouraging knowledge of the history, culture and traditions of "racial or ethnical"[27] groups present in the State party, including indigenous peoples and persons of African descent. Educational materials should, in the interests of promoting mutual respect and understanding, endeavour to highlight the contribution of all groups to the social, economic and cultural enrichment of the national identity and to national, economic and social progress.

35. In order to promote inter-ethnic understanding, balanced and objective representations of history are essential, and, where atrocities have been committed against groups of the population, days of remembrance and other public events should be held, where appropriate in context, to recall such human tragedies, as well as celebrations of successful resolution of conflicts. Truth and reconciliation commissions can also play a vital role in countering the persistence of racial hatred and facilitating the development of a climate of inter-ethnic tolerance.[28]

36. Information campaigns and educational policies calling attention to the harms produced by racist hate speech should engage the general public; civil society, including religious and community associations; parliamentarians and other politicians; educational professionals; public administration personnel; police and other bodies dealing with public order; and legal personnel, including the judiciary. The Committee draws the attention of

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[27] International Convention on the Elimination of All Forms of Racial Discrimination, art. 7.

[28] Adapted from the Rabat Plan of Action, para. 27.

States parties to general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights[29] and to general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In these and other cases, familiarization with international norms protecting freedom of opinion and expression and norms protecting against racist hate speech is essential.

37. Formal rejection of hate speech by high-level public officials and condemnation of the hateful ideas expressed play an important role in promoting a culture of tolerance and respect. The promotion of intercultural dialogue through a culture of public discourse and institutional instruments of dialogue, and the promotion of equal opportunities in all aspects of society are of equal value to educational methodologies and should be encouraged in a vigorous manner.

38. The Committee recommends that educational, cultural and informational strategies to combat racist hate speech should be underpinned by systematic data collection and analysis in order to assess the circumstances under which hate speech emerges, the audiences reached or targeted, the means by which they are reached, and media responses to hate messages. International cooperation in this area helps to increase not only the possibilities of comparability of data but also knowledge of and the means to combat hate speech that transcends national boundaries.

39. Informed, ethical and objective media, including social media and the Internet, have an essential role in promoting responsibility in the dissemination of ideas and opinions. In addition to putting in place appropriate legislation for the media in line with international standards, States parties should encourage the public and private media to adopt codes of professional ethics and press codes that incorporate respect for the principles of the Convention and other fundamental human rights standards.

40. Media representations of ethnic, indigenous and other groups within the purview of article 1 of the Convention should be based on principles of respect, fairness and the avoidance of stereotyping. Media should avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance.

41. The principles of the Convention are served by encouraging media pluralism, including facilitation of access to and ownership of media by minority, indigenous and other groups in the purview of the Convention, including media in their own languages. Local empowerment through media pluralism facilitates the emergence of speech capable of countering racist hate speech.

42. The Committee encourages self-regulation and compliance with codes of ethics by Internet service providers, as underlined in the Durban Declaration and Programme of Action.[30]

43. The Committee encourages States parties to work with sports associations to eradicate racism in all sporting disciplines.

44. With particular reference to the Convention, States parties should disseminate knowledge of its standards and procedures, and provide associated training, particularly for those concerned with its implementation, including civil servants, the judiciary and law enforcement officials. The concluding observations of the Committee should be made widely available in the official and other commonly used languages at the conclusion of the

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[29] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18* (A/48/18), chap. VIII, sect. B.

[30] Durban Programme of Action, para. 147.

examination of the report of the State party; opinions of the Committee under the article 14 communications procedure should similarly be made available.

IV. General

45. The relationship between proscription of racist hate speech and the flourishing of freedom of expression should be seen as complementary and not the expression of a zero sum game where the priority given to one necessitates the diminution of the other. The rights to equality and freedom from discrimination, and the right to freedom of expression, should be fully reflected in law, policy and practice as mutually supportive human rights.

46. The prevalence of racist hate speech in all regions of the world continues to represent a significant contemporary challenge for human rights. The faithful implementation of the Convention as a whole, integrated into wider global efforts to counter hate speech phenomena, represents the best hope of translating the vision of a society free from intolerance and hatred into a living reality and promoting a culture of respect for universal human rights.

47. The Committee regards the adoption by States parties of targets and monitoring procedures to support laws and policies combating racist hate speech to be of the utmost importance. States parties are urged to include measures against racist hate speech in national plans of action against racism, integration strategies and national human rights plans and programmes.